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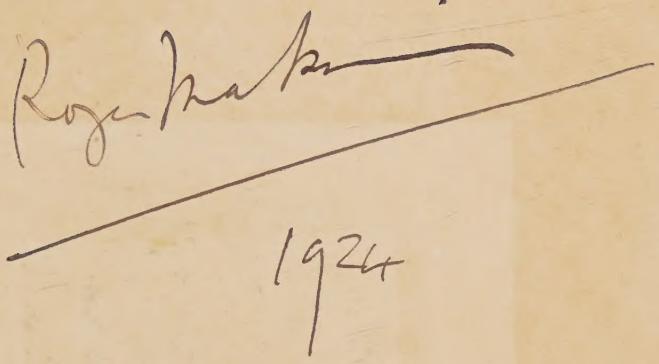

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ENGLISH POLITICAL PHILOSOPHY

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FROM HOBBES TO MAINE

BY

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FIFTH IMPRESSION

LONDON
EDWARD ARNOLD
41 AND 43 MADDOX STREET, BOND STREET, W.
1919

JA84
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CONTENTS

HOBBES

CHAPTER I

On Man

SEC. PAGE

1. Introductory 1
2. Portrait of Man in general—The Intellectual Man; his Faculties—The Moral Man—The Way to Truth in the Sciences; in Law and Politics—Merits and defects of Hobbes' account of man—His doctrine of the Physical and of the Mental Equality of men 4
3. Primitive Condition of Man in the State of Nature—The War of every man with every man: a Deduction from the Equality of Ability, and men's Passions—Confirmation of his Deduction from men's distrust of each other, and from what takes place in a Civil War, where there is a partial return to the State of Nature 9

CHAPTER II

On Commonwealths

1. The Various Laws of Nature summed up into one Universal Maxim (the Golden Rule of the Gospel put negatively) —Why ineffectual in the State of Nature—Small unions or temporary leagues will not avoid the evils of the State of Nature—The only means of escape from the State of Nature: The Original Social Covenant or Contract, the Origin of Commonwealths or Civil Society—The other Origin is Force, in two forms 12
2. Merits and Defects of this theory—Defects in his Psychology —Omission of the fact of Sociability—Erroneous History —Recent research does not reveal in primitive times a promiscuous war between Individuals, but Tribes—The alleged Covenant not supported by History 15

138466

SEC. PAGE

3. Deduction of the Necessary Attributes or Marks of Sovereignty — Duty of Obedience to the Sovereign — The Covenant one-sided, as the Sovereign cannot be subject to any Check or Condition—Proof of this—the absurdity of the contrary view shown when the People is itself Sovereign—Other Attributes — the Sovereign can commit no Injustice; nor be subject to Punishment; has the right to govern Doctrines; to make Laws of Property; to command the Army; to choose Councillors, Ministers, Judges; and the Power to Reward and Punish 17

4. Great Importance of his Theory of the Sovereign Powers—Its Influence on later Political speculation and in History—How far Governments should possess these attributes—The two dangerous attributes — His view more true of Early times, in which the interest of the governing one and of the many was largely coincident—How far true in Hobbes' time in England—The struggle against Absolute Monarchy in the Seventeenth Century—How far Hobbes is "the Apologist of Despotism" 20

5. Theory of the Diseases and Dissolution of Commonwealths—Enumeration of the Diseases and Infirmities—Importance of Hobbes' doctrine — His neglect of History — Historical Origin of most of evils signalised—How the real evil of a divided Sovereignty has been escaped in England—How we have escaped without "Dissolution"—Other "Diseases" . 26

6. Functions of the Sovereign: First, to furnish sound Political and Moral Teaching to its Subjects—The Ten Commandments (analogous to those in Exodus), containing the duties of the Subjects to the Sovereign, and of Subjects to each other —The People are capable of learning; but their Instruction depends finally on "the right Teaching of youth in the Universities," the true ultimate Fountains of political knowledge 34

7. Other Functions of the Sovereign (or the State);—To secure Equal Justice, without partiality to the Great—To impose Equal Taxation—To provide Relief for the Destitute Poor, and Work for the Unemployed—In extreme cases to undertake compulsory State Emigration 39

8. Functions of the Sovereign continued;—To make good Legislation—To duly Reward and Punish—To select good Councillors and Leaders in War 41

9. Great Merits of the latter part of Hobbes' teaching—Anticipation of the Theory of Sovereignty of Bentham and Austin—and of their Analytical Method applied to the principal Legal Conceptions—Anticipation of the Sociologists of the present

SEC. PAGE

Century—Great results reached by him through Deduction and Analysis, without the aid of History . . . 43

10. Influence of Hobbes in the sphere of practical politics in England 47

LOCKE

CHAPTER I

On Civil Government

1. Locke's account of Primitive Man—His difference from Hobbes—also from Maine—The State of Nature not necessarily the War of all with all—The three "Inconveniences" in "the State of Nature" which led to the Social Contract and the establishment of Civil Government—Necessary limitations of the Supreme Power, especially the Legislative . . 50

2. Important consequences from Locke's Theory—Substantial truth in Locke's Theory of Limitations, whether under a Monarchy, an Aristocracy, or a Democracy . . . 58

3. Objections to Locke's Political Doctrine—Not verified by History before his time—How some Constitutions made after his time have been the result of a Social Contract—Origin of Government according to the Historical School . . 60

4. Rousseau's Version of the Social Contract—The original Social Contract was bad for the Poor, and only favourable to the Rich—The proper Contract to guarantee the rights of the Poor — Results of this theory applied in France at the Revolution—Final Success in large measure of Rousseau's Theory 64

5. Final pronouncement on the doctrine of the Social Contract . 70

CHAPTER II

On Toleration

1. Locke's Argument in favour of Toleration—The different ends of Government and Religion—Argument that the care of Souls does not belong to the Civil Magistrate or Prince—The necessary Qualifications of his view . . . 72

2. How far Toleration should extend—Locke's General Rule—His three exceptions 76

SEC. PAGE

3. *Second Letter on Toleration*—Merits and Defects—Doubtful Argument advanced 80
4. Examination of his Theory of Toleration from the point of view of History, which shows that, though full toleration is now good for civilised States, it was not always so—The great argument for toleration in modern civilised States—How far it goes beyond Locke 82

BURKE

CHAPTER I

Reflections on the French Revolution and the Fundamental Institutions of Society

1. Introductory—Previous Political writings . . . 88
2. *Reflections on the French Revolution*—Object of the work—Its general character—Merits and Defects—Contains, when taken with the *Appeal from the New to the Old Whigs*, a new Political Theory, and an answer to the doctrines of Rousseau 91
3. The mistakes of the French Reformers and the ease of their task according to Burke—The state of France described—The cause was that "property did not govern" . . . 95
4. Criticism of his first group of "Reflections"—The French appealed to Natural Rights because they had nothing else to appeal to—Real difficulties of the Assembly—Real reason why Property did not govern at the Revolution—Burke's argument that Property rather than Ability should govern in a State—Its substantial Truth—Its Limits . . 97
5. "The Rights of Man"—Attack on the Doctrine—His Theory of the Real Rights of Man—Examination of his theory—His disdain for "Political Metaphysics," into which yet he is obliged to descend—Imperfect treatment of the important question of Natural Rights 103
6. The 5th and 6th October 1789—Lament for the Age of Chivalry—What Chivalry had done for Civilisation—Consequence of its decline and disappearance—Pessimistic Prophecy as regards the future of France 111
7. Examination of his remarkable reflections on this subject—Historical Review—Attitude of the Church and Nobility to Learning—His Prophecy only true for the near future and for a short time—The Three Revolutions, Industrial, Political, and Religious, of the latter half of the eighteenth century 114

SEC PAGE

8. Attack on the French Philosophers—Denial of Progress in Moral and Political Speculation—His Error—His Doctrine of Prejudice; a great but one-sided Truth — The Complementary Truth—Bacon on prejudices—Importance of a Nation's prejudices 120
9. Consecration of the State and the Fundamental Laws—Importance of this in a Democracy with "neither Shame nor Fear to control it"—Admirable exposure of the besetting sins of Democracy—His Fears that in a Democracy the Fundamental Laws, Civil or Constitutional, may be rashly changed—How far well founded 126
10. The State of Divine Origin—Intimate fusion of Church and State is our Polity — Truth of the former Doctrine, and further Illustration of it — His remarkable defence of Church Endowments questionable—Ends of Society—In what sense Society is a Partnership 132
11. Conclusion of the *Reflections*—His Defence of the *Ancien Régime*, and Criticism of the Constitution of 1791 . . 139

CHAPTER II

Appeal from the New to the Old Whigs

1. The New Whigs (or "English Jacobins")—Burke's Examination of their Doctrine—Ideas on the Social Contract or Covenant—Can the People resume their Original Political Power, once they have "discharged themselves of it by Habitual Delegation"?—What constitutes the People?—His Theory of "a Natural Aristocracy" 142
2. Permanent Truth in Burke's Theory—Necessary Qualifications—The Aristocracy in France and in England at the time—Portion of Truth in the Doctrine of the Sovereign People—The "Political Sovereign" and the "Legal Sovereign" — How far their Wills coincide in our Present Government—Doctrine of Equality—Truth and falsehood in it—True defence of Inequality of Wealth—Have the Majority the Right to change the Government at pleasure?—The only safeguards against the abuse of Political Power by the Sovereign People 148
3. Apprehended Danger to the Constitution from the discontent of the English Jacobins—Warnings as regards the Future—Great hereditary estates no protection, unless the Jacobinical doctrines are repressed — Eulogium on

SEC. PAGE

the British Constitution—How far the Dangers signalled were real 156

4. *Thoughts on French Affairs*—New Estimate of the Revolution and its Causes—The various classes of English sympathisers — Lessons of the Revolution — Classes who were Actors in the Drama of the Revolution—His Conclusion respecting the same Classes in England—How far the Revolution was "the Revolt of the enterprising Talents of the country against Property"—The main aims and results of the Revolution 158

5. Estimate of Burke's Political Philosophy as a whole — His essential Conservatism—His Disbelief in Progress, Political, Moral, or Religious — Effect of the Revolution on his mental balance — How far he checked the Revolutionary Spirit 166

6. The Revolution postponed comes to England—Its slow and safe course hitherto 170

BENTHAM

CHAPTER I

Works in General—His Theory of Morals

1. Introductory 174

2. Bentham's Mental and Moral characteristics—His services as a Law Reformer and a Reformer of the Constitution—Maine's tribute to Bentham as a Law Reformer 178

3. *Fragment on Government* — *Introduction to the Principles of Morals and Legislation*—The predominant Moral Theories at the time—Theory of Natural Law and Intuitional Theories, like Butler's — Relation between these — His attempted refutation of these theories — Exposition of his theory — Disproportion of the Work, most of which relates to the mere classification of possible Offences 181

4. Examination of his Moral Theory—Its inapplicability in the Sphere of Prudential Action — It takes away the distinction of Right and Wrong, if Conscience and Moral Sentiments be supposed absent—Also the Moral basis of Punishment 190

5. His other theory that we should aim at the Happiness of the Greatest Number — Impracticability of this theory held alike by Bentham and Mill—How far we should aim at the

SEC. PAGE

Happiness of Others—Distinction of Bentham's impossible Philanthropy from the "Love and Service of Humanity" of the Comtist 195

6. Further indictment of Bentham's Moral System — No room in it for Devotion and Sacrifice—How these virtues were originally fostered—Their Instinctive Origin in the Parent for protection of the Young—Their great stimulation in the Tribe or Clan and Nation through War—The other Virtues brought in their Train 202

7. Sources of his defective Theory of Morals in his Theory of Punishment—Morality conceived to be a scheme of rules enforced by the Popular Sanction, as Legislation was enforced by the Political Sanction—This Moral Code or "Deontology" not worked out by Bentham . . . 205

CHAPTER II

Theory of Legislation

1. His Utilitarianism more applicable in the Sphere of Legislation than Morals—The necessary qualifications and limitations —Bentham a Reformer, not a Revolutionist; in a position between Burke and Rousseau—General Aim of his Reforms 211

2. Details of his theory—True Aim of the Legislator, the General Happiness—How to reach this aim—Security and Equality in the distribution of Property the principal aims —The chief subordinate aims 215

3. Why Security is the principal aim, and to be preferred in case of conflict with Equality—Law alone can give Security— Security refers chiefly to Property—Bentham's omission to consider the Historical Origin of Property . . . 217

4. Property a Creation of Law—How it is good for the Poor as well as the Rich—Evils which result from attacks on Property by the Government—Advantages of the Security of Property— Illustration of this from the reclamation and culture of the North American Continent 220

5. How far a System of Equality of Wealth is possible— Conditions necessary to carry out a Scheme of Equality by Government — The sole means of reconciling Security with greater Equality—A Natural tendency to Equality asserted by Bentham — Important qualification of this tendency during the present century . . . 223

SEC. PAGE

6. Security not infringed by the State taking part of Private Property the better to protect the rest;—nor for Cultivation of the Arts and Sciences;—nor for Poor Relief—Argument in favour of Poor-Laws—Should the Clergy be paid by the State?—Enumeration of attacks on Security . . . 226
7. Power of the Laws over Expectation—The marks of Good Laws 229
8. Enumeration of the valid Titles to Property—Proposed new Law of Intestate Succession—Proposed new Offence not recognised in our actual Legal System — Approval of the division of Commons in England 232
9. General review of Bentham's Theory of the Civil Law—Omissions and Defects—Has not considered the Historical aspect of the question; denies the Theory of Natural Rights—The task of the Legislator is to harmonise, as far as possible, the aims at General Utility and Natural Justice . . . 234
10. Bentham as an Analytical Jurist—Insufficiency of the Analytical Method to furnish us with a true Science of Jurisprudence . 238
11. His views on Codification—His offers to Foreign Governments to Codify their Laws—Why they were not accepted — Our own need of Codification 241

CHAPTER III

On Constitutional Reform

1. The Best and the Worst Governments according to Bentham—Examination of his Theory that an Absolute Government must be a bad one—His view not supported either by General History or English History—Is an Aristocratic Government necessarily bad?—Appeal to English History during the two periods of Aristocratic ascendency 247
2. Bentham's Remedy for our "Aristocracy-ridden Monarchy"—How far adopted — The change in the Constitution — The Political Influence of the Crown and House of Lords since Bentham's time—Democracy not dangerous according to Bentham—How far true 259
3. The Future—Analysis of our present Mixed Government—Fusion in it of Monarchy, Aristocracy, and Democracy—The Prime Minister the nearest approach to our former governing Kings 262
4. Present improved method of finding our King—Advantages of it: ensures a ruler of high ability, but not necessarily a great statesman—Why the latter are very rare . . 268

J. S. MILL

CHAPTER I

On the Science of Society

SEC. PAGE

1. General—Moral and Intellectual character of Mill—His hopes for Mankind—His Humanitarian zeal—His writings . . 271
2. His *System of Logic*—The Methods proper in the different Sciences—The appropriate Method in Political Science—His change of view on this point—Under the influence of Comte he pronounces finally in favour of the Historical Method, except in Political Economy 274
3. His belief in the Possibility of a Science of Society—Main Question that the Science has to answer — The Law of Progress—Vico's Theory of Progress—Qualifications for the successful Study of Sociology—His difference from Comte and Herbert Spencer on this point 278
4. Social Statics and Social Dynamics—Requisite of a Stable Political Union — Source of his views, the "Germano-Coleridgean School" 283
5. The great problem is the Dynamical one, How one State of Society changes into the following one—Impossibility of the Sociological problem as first conceived by Mill — Simplification of the problem by Comte — His solution; all Progress due to the Progress of the Speculative or Scientific Spirit — Comte's Law of Progress, or the "Law of the Three Stages"—Its relation to Sociology, according to Comte — His Positivist Polity — Mill's Disappointment with it 287
6. His great Expectations from Sociology—A Philosophy of History, its initial Form—The Philosophers of History of our Century —Tendency of Philosophical Historians to divide and simplify the problem—The new Historical School 294
7. How far a Science of Sociology is possible—What Subjects should enter into it as Sub-departments?—The chief Social Interest, and the one which influences all the rest, is the State of the Speculative Faculties, both as regards Science and Philosophy—Herbert Spencer's conception of Sociology —The great difficulties in the way of constructing the Science 297
8. Relation of Great Men to Progress—How they may be viewed by the believers in a Science of Sociology—Mill's opinion—How far we may look for great Men (Poets, Statesmen, Philosophers, Discoverers in Science, or Inventors) in future—In what

SEC. PAGE

directions there is room for Progress, in what it may be regarded as completed 302

9. Concluding Remarks as to Mill's view of Sociology—His Defects as an original thinker and constructor—His tendency to lean upon the ideas of others and in consequence to a continual change in his own views—His improvement in Bentham's Utilitarianism, due to criticisms (adopted by him) of adversaries—The sphere of Liberty 310

CHAPTER II

On Representative Government

1. Change of outlook in Mill's *Representative Government*—Signs of disillusion in the work—What the Historical School had taught him — His objections to the Historical Theory of Government—Advance on the Abstract Method of Hobbes and Locke 313

2. The true Criterion of a Good Government—Its tendency to promote the general mental advancement of the Community—Important inference from this as to the most desirable Form of Government—Advance on the views of Locke and the thinkers of past centuries 318

3. His Examination of the opinion that a Despotism would be the best Form of Government if the Despot were good—His Proof that the ideally best Government is Representative Government 321

4. Examination of his Proof—A Representative Government does not necessarily develop a higher type of National Character —Appeal to English History—High National Character of Englishmen under the nearly despotic Tudor Government—Still more in the seventeenth century, when on Mill's Principles their Character must have been formed almost under Despotism—His theory does not allow for the great stability of National Character 326

5. On his own showing Representative Government is only best for a few Nations, and even with them it may be the worst if Minorities are not represented 329

6. Alleged Functions of the Representative Body, not Legislation nor interference in Administration, but Control and Criticism 330

7. Dangers of a Government largely controlled by Labourers is the arbitrary Taxation of the wealthier classes—Consequences of attempted Socialistic Legislation—Consequences of Legislative attempts to raise Wages, by fixing a minimum Wage, or lessen-

SEC. PAGE

ing by Law the hours of labour—Just claims of the Worker and of the Employer—The terms should in general be regulated by Agreement, not by Law 333

8. His Safeguards against the danger of Class Legislation by Labourers, the Representation of Minorities and Plural Voting —His hostility to the Payment of Members of Parliament . 337

9. The Executive in a Representative Government—How to ensure Responsibility—How Ministers should be appointed, and Judges and the Civil Service 341

10. Mill's later Works — General Estimate of the Man and his Work — His comparative failure and waning Influence — The causes 344

MAINE

CHAPTER I

On Ancient Law and Early Institutions

1. His Dissatisfaction with the state of Jurisprudence as a Science—The alleged Cause of this unsatisfactory state was the adoption of a wrong Method, whether the Deductive *à priori* Method or the Analytic Method of Austin—The proper Method—The earliest form of Laws and Customs—Agencies by which Laws are successively improved in progressive societies 348

2. His Mistake as to the earliest form of Laws and Customs—The various Origins of Customs—Later Law not all contained in the primitive jural germs, as Maine supposes—Various Sources of Law 352

3. The earliest social group or social unit — Inconsistent accounts — The question of the earlier group still uncertain. 354

4. Property and its History—Maine's two Origins of Property—Stages in the Transition from early communal to individual Property—General tendency through History to Private Property—Early Obstacles to Alienation of Landed Property —Modes in which they have been overcome, chiefly Classification and Usucapion or Prescription—Utility of the latter to the Romans and the Moderns—Influence of Courts of Equity on Property—Further treatment of the History of Property in the *Early Hist. of Institutions* . . . 356

SEC. PAGE

5. History of the Testamentary Power—Early Freedom of Bequest in Roman Law — Maine's explanation — Later Retreat of Roman Law, under the influence of Natural Law, in favour of the Children—Origin of Freedom of Bequest in English Law . 360

6. Origin and History of Contract—Limited Sphere of Contract in early Times—Causes—Characteristics of ancient Contracts illustrated from Roman Law—The Classes of Roman Contracts—Insufficient Treatment of Real Contracts—Difference from Savigny as to the earliest Class of Contracts—How far Real Contracts imply private Property—The Consensual Contracts—Importance of Freedom of Contract—Exceptions to Freedom of Contract—Difficulty of reversing the System of Contract and Property with which it is bound up . . 363

7. His other Works — *The Early Hist. of Institutions* — Difficulty of his Task, which necessitates an additional inquiry into the Origin and History of Sovereignty, of Legislative Bodies, of Aristocracies, and their different Kinds — Origin of Feudalism — Was the Feudal Lord the Patriarchal Chief who "had passed through the Crucible of Feudalism?"—His Correction of his earlier theory of Feudalism and of Primogeniture—General theory of the Origin of Aristocracies—Defects—Omissions in his Work—The psychological explanation of the Origin of Property and Contract not sufficiently dwelt on by the Historical School 370

8. The great defect in Maine's conception of Jurisprudence, his denial of Natural Law, reposing on our sense of Justice or Equity—His admissions of the great results of Natural Law —What it has done for the Romans, for civilisation, and for the improvement of our own Laws—Great importance of the Question—Proof of the existence of Natural Rights resting on the instinctive feeling of Justice—But must be supplemented and checked in certain cases by considerations of Utility—Furnishes the best defence of Property and of Freedom of Contract—Consequences of the denial of Natural Law and Natural Justice — No necessary Antagonism between the Historical Method and the theory of Natural Rights 377

CHAPTER II

On Popular Government

1. His Method applied to Political Institutions not quite the Historical Method, but a mixture of History and Deduction

FIG. PAGE

—Recent History proves modern popular Government unstable—The Wire-puller and Party Government—The most extensive Suffrage likely to lead to a "mischievous kind of Conservatism"—Examples—Popular Education will not prevent this—All Improvements the work of Aristocracies—Consequence of attempts to alter by law the Distribution of Wealth by the Working Classes—His fear that they will tax the Rich—The necessary series of consequences—Final conclusion—His fears exaggerated for reasons already given 389

2. *On the Nature of the Democracy*—The opinion of its irresistibleness due to De Tocqueville—History proves the reverse—An "all but universal movement towards Kingship, from the Fall of the Roman Republic"—His Criticism of Bentham's argument in favour of Democracy—Democracy the most difficult kind of Government—His Reasons—Resulting consequences: Party Government, Corruption, and the Manufacture of Generalities—Effects the reverse of those expected by Mill from the participation of the many in Politics—The proper Remedy for us . . 394

3. *The Age of Progress*—His Belief that Man is a Conservative Animal, who does not love change—Proof, from the Literature of Fiction, which finds its Ideal in the Past, from Fashion which is seldom new, from unchanging Manners and Customs—The desire for change limited to Politics—Causes: the exciting Nature of Party Politics and Competition in the production of Party Programmes—Danger of the Latter 402

4. Deeper Causes: the Theory of Bentham, and Rousseau's Theory of the Sovereign People, as contained in his *Contrat Social*—Truth and Error in his criticism of Rousseau—Defects in Bentham's theory, as rightly pointed out by Maine—His Conclusion: the Ideas current as to Progress require Revision—Danger of sudden and sweeping Political Reforms . . 405

5. Why historical Constitutions are better than *à priori* ones—Uses of a Second Chamber—Is the Age of Aristocracies gone?—How far a hereditary Legislature is favoured by the Darwinian doctrine of Heredity—Examination of Maine's view—How far Democracies are capable of producing Aristocracies—Criticism of Maine's views—Opinion of Professor Sidgwick 408

6. Opposite views of Mill and Maine as to Progress—Maine's changing views: at first, identified Progress with Change in Laws; afterwards, with the "Production of new Ideas" in any important Social Subject; finally, makes Progress depend on scientific Discoveries and Inventions, which is largely

PAGE

true, but which is the theory of Comte — How far Maine is logically committed to innovating Legislation — Final Estimate of his general Theory of Progress—The last three Centuries of Progress — How far and in what directions Progress is still possible, and in what directions it may be regarded as closed or expected to cease . . . 411

INTRODUCTION

§ 1

The design of the following work is twofold—first, to give a connected account within a moderate compass of the political theories of the greater English political thinkers who have most influenced practice from the days of Hobbes, the first great fountain of original ideas; secondly, by a reasoned criticism, to distinguish what is permanently true from what is doubtful or erroneous, to disengage the former, and, as far as may be, develop it further, with the hope that finally from the exposition and criticism together something like an Introduction to Political Science might result, resting on authority and reason combined.

It is conceived that, by the critical application both of the old Deductive and the new Historical Methods of reasoning to the successive systems of the leading English political thinkers, we might arrive, if not at a more comprehensive system, which it is not my object to attempt to construct, yet at a body of principles, a set of reasoned conclusions on the more important and fundamental and recurrent topics that might be useful to all who take a rational interest in politics and political questions.

The book is addressed partly to the ordinary students of political philosophy (who have hitherto been largely nurtured on the works of Maine and the harder and scantier fare of Bentham and Austin); but it is also addressed to serious students of maturer years, such as those who have honoured me by reading my previous work on Socialism,—to all, in

fact, who desire to have a surer grasp of political principles, perhaps better reasons for the articles of their political creed. The latter class I believe to be an increasing one, as it is very desirable it should be in days when political power is so widely distributed without the political knowledge that should accompany it; knowledge which can only be supplied without adulteration to the many by the educated and more fortunate classes; and which it is at once the duty and interest of the latter that they, and not demagogues, should endeavour to supply.

The political thinkers with whose systems I deal are Hobbes, Locke, Burke, Bentham, J. S. Mill, and the late Sir Henry Maine, because, if not all in the first rank, they have been the most influential in the sphere of practice. They have all had influence—the first three vast and almost incalculable influence. Like the Hebrew prophets, they have influenced their age, but, more than the prophets, they have furnished the thoughts which governed the minds of the apparent governors, whether kings or statesmen. They have been in a certain sense the true kings. The ideas of Hobbes ruled for years in England, and are even yet a power; while Locke's book on *Civil Government* furnished the Whig creed for the whole century before the French Revolution. Still more, the ideas of Hobbes and Locke combined contain Rousseau's ideas, whose doctrine of the sovereign people, so explosive at the Revolution, and so powerful now, is but a blend of Hobbes' idea of the sovereign's omnipotent attributes joined to Locke's idea of the people as the source of political power. The like is true of Bentham, whose chief ideas and methods are to be found in Hobbes and Locke, but especially in the former. Thus his theory of Law, as the command of the sovereign, his analytical and deductive methods, are all in Hobbes. Only one thing, as Maine remarks, Bentham added to Hobbes' doctrine of sovereignty—the utilitarian theory that the sovereign should make the greatest happiness of the greatest number its chief aim. Finally, the Declaration of American Independence, as drafted by Jefferson, and even the American Constitution of 1787, as shaped by Madison and Hamilton, are

based largely on the ideas of Locke and Rousseau. Again, Burke for a long time did not pass beyond the ideas in Locke's *Civil Government* which pervade his early pamphlets, especially his *Thoughts on the Present Discontents.* It was only when the French Revolution showed him to what dangerous extremes these ideas might be pushed that he threw away his earlier creed, and, after long and deep meditation, fashioned a new one for himself, for the Conservatives in England, and indeed all over Europe. And this creed we have in his *Reflections on the French Revolution*; in which we have a new theory of government and society and a new way of looking at their problems,—in fact, that rare thing, a new book on politics, with a new method, in which there is little left of Locke, though something considerable of Hobbes appears. So powerful and far-reaching in the political sphere may ideas be, and so limited the supply of original ones.

§ 2

For a further reason I have limited myself to these six thinkers. Amongst them they sufficiently illustrate the different schools of political thought—Conservative, Liberal, Radical, and even Socialist. Still more, they represent and exhaust the methods of discovering truth on the subject. Thus Hobbes and Locke employ the pure Deductive Method as rigidly as the geometrician, who draws conclusions from his definitions and axioms, when they assume abstract men, originally free and equal, and reason to what such homogeneous human atoms, all subject to the law of nature, must or should do. That is to say, they employ a bad type of deduction and one unsuited to political science; but by no means always, for in other cases where they start from sound principles, where the matter is not complicated, where causes are not many and entangled or their effects blended, they attain to important and permanent truth; and this is especially the case with Hobbes, whose original genius and penetrating glance more than compensates for his sometimes defective logical process.

In like manner Bentham relies solely on the Deductive Method accompanied by Analysis. He forgets, in common with

all who rely solely on deduction, that in social and political phenomena, plurality of causes is at work which makes it wrong to refer a given effect back to any one cause singly, not to speak of the reverse difficulty, so near to impossibility of tracing or accurately measuring the effects of known causes. Thus he argues deductively that Representation is the only thing that can produce identity of interest between the governed and their rulers—an argument which Mill, his former pupil, rejects on the ground that identity of interest may very well come from the sovereign and subjects, both desiring strongly the same things, as in the case of Henry VIII. and Queen Elizabeth, who both had at heart the same main objects as the body of the people. Again, he argues, that if power is placed in the hands of the people they cannot abuse it. The majority may indeed sacrifice the interests of the minority, but the happiness of the majority is the true end of government. But it is urged in reply by Maine that Bentham assumes that the majority know their own interest, and what will best promote it, which is the reverse of the truth. And thus they might fail to secure their own happiness or interest, while sacrificing all other interests.

But perhaps a moral and political thinker like Bentham might inform them what constituted their happiness and what things would best promote it, so far as it depends on the action of government; and both these things he attempts to do by deduction and analysis in his *Theory of Legislation*. In reality, in this work all that he recommends to the government is to "leave alone" in the sphere of industry, and to aim chiefly at security to the person, property, and reputation, and a gradual approach to equality, on the ground that these things will most increase the happiness of the greatest number. Now, to aim at security will promote general happiness, but that *laissez faire* and greater equality would best promote it, are both extremely doubtful propositions.

According to Mill, the Historical Method is the proper method in political inquiries. He learned this, he tells us in his *Autobiography*, when he was writing the last book in his *Logic*, entitled the "Logic of the Moral and Political

Sciences," and he learned it from Comte; so that when he sat down to his task he had no true idea of the right method, having told us earlier in the work that it was the deductive. He now calls it the Inverse Deductive Method, because the generalisations are to be inductively gathered from history, and verified by deducing them from laws of the human mind, by which he appears to mean general history instead of the history of the chief social interests, such as law and political institutions. And thus having no firm or clear hold on the method, the result is that he is unable to make much use of it in his *Representative Government*, where he goes mainly by the old method of Hobbes, namely, Deduction and Analysis. · One thing, however, he had learned from the new method; and this was something considerable, because it carried him beyond the point of view of Hobbes, Locke, and Bentham, and all who employ absolute arguments. He had learned "that all questions of political institution and forms of government are relative to time, place, and circumstance; that government always tends to pass into the hands of the strongest force in society; that what this power is does not depend on institutions, but institutions on it; that a true philosophy of politics presupposes a previous theory of human progress, and that this is the same thing with a philosophy of history" (*Autobiography*, p. 162).

This method is undoubtedly a powerful auxiliary resource in political science, but it is perhaps not equally valuable in all the departments of it. Primarily, the method is inductive; it is called the Historical Method, because it tries to gather its generalisations or facts from history (sometimes even from contemporary phenomena regarded as evidence of a past state of things). But it is not from general history that the generalisations should be attempted to be drawn, as Mill supposes, because, general history being largely a record of contingent events, the same situations even in outline do not recur sufficiently often to give rise to many empirical laws. It is rather from the history of laws, institutions, forms of government, religions, or revolutions, political or religious, that a certain kind of generalisations may be collected. Thus the Historical Method

tries to ascertain as a fact the general origin of Laws and Customs, or, if there be more than one origin, it tries to find them. This inquiry after origins is evidently an inductive inquiry. Supposing that by this means the first forms of Law had been found and proved to be so without doubt, the Historical Method then tries to trace the changes amongst progressive people as a fact, and to ascertain the causes of them, which might lie in the general desire for improvement, or it might even in some cases come from the fact of a class getting the upper hand, and shaping the law accordingly. But if we could find the embryonic origin and could trace the subsequent changes, if we could find the whole chain of causation, or rather the various impulses in the progressive movement (supposing, for example, a case of progress such as is shown in Roman law) from first to the final stages —we should, according to Maine, have a scientific account of Law; and in like manner of Political Institutions, or whatever else. We should have a science resting on historic inductions, but in which, nevertheless, large use is made of deductive reasoning by those who have most successfully worked it, like Maine in this country, or Savigny in Germany.

The great lesson of this method is that forms of government, as well as laws, are related to the stage of development, the character of the people, their physical and general environment, even to accidents of history—a point of view which excludes all absolute arguments; that the ends of government in like manner are different—they may be self-preservation, war and conquest, culture, the general happiness, justice; and consequently the amount of individual freedom allowed will be very different, and less in former ages than in our time. A great end may have even been the maintenance of the national religion in its purity; in which case toleration of different religions was formerly found to be impossible.

But (to continue the question of proper methods of inquiry) may we not also reason from certain *à priori* principles—principles not gathered from experience but from our instinctive intuitions of justice, the germs of which all men have (and even some of the lower animals apparently), which grow clearer

with advancing civilisation, which are specially fostered by great lawyers, moralists, and philosophers? In a word, may we not attain to an *à priori* science of natural law or natural rights; and use and apply its principles deductively to new cases, as is certainly still done in courts of justice by our ablest judges? I believe we may, but more in the case of private than public law, more with reference to private rights than political rights. I believe this method of reasoning is also legitimate, and that, though it has been temporarily eclipsed, first by the success of Bentham's Theory of Legislation, and next by the Historical Method, which Maine thinks irreconcilable with it, it will be found indispensable to employ it so long as man is a moral being who has the ineradicable intuition of the *right*; who believes that there is a justice, and that the just *ought* to be more and more realised. Now, we do not know very clearly how to promote the general happiness by new laws, owing to the vast complication of a modern society; and we do know that what legislators meant for good sometimes does harm. But we have ideas, more or less clear, about justice. This is indisputable fact, and it is impossible to have the ideas without the accompanying feeling that they *ought* to be realised in a rightly constituted society; subject to the condition that the attempt to realise them would not decrease the happiness of the greatest number. Utility and justice generally do coincide: where they do, justice should take the lead; where they do not, it should give way to considerations of utility. Where this is not admitted, as it sometimes is not, the society so far is still in "a state of war," as in the case where the subjects of the same government have different civil or political rights. Here might makes right. I am far from saying that might is not sometimes legitimate, but it cannot be a harmonious, or happy, or hardly even a prosperous society in which it is so, and in which, as a consequence, the rules of justice and of morality are largely suspended, between the individuals so unequally treated.

On the question of method, Burke occupies a peculiar and somewhat ambiguous position. In one place he defends the method of pure deduction after the manner of Hobbes. Thus

he says "political reasoning is a computing principle, adding, subtracting, multiplying, and dividing, not metaphysical quantities, but true moral denominations." In another place he lays down that "nothing universal can be rationally affirmed on any moral or any political subject," which is nearly the position of the Historical School. He does not positively deny the alleged original social contract or covenant, but he inclines to draw conclusions from it hypothetically against the doctrine of the Rights of Man. In general he reasons from the established fact, assumes that what *is* is what *ought to be* on grounds of utility, or from the evils that the contrary doctrine had brought to France, which he thinks can be shown by deduction to be contained in the principles which he terms "a digest of anarchy." On the whole, though he employs the Deductive Method, it is employed on principles either obtained from experience or history, and so he belongs rather to the Historical School.

And the fact is, too, that in his *Reflections on the French Revolution* he has a practical end in view, to which the establishment of theoretical principles is subsidiary. He wishes to produce a conviction that the Revolution is an evil, and for the purpose he employs not only deductive reasoning, which is frequently acute and sound, but also all the resources of a splendid rhetoric likely to influence the feelings and prejudices and to act finally on the judgment. This latter is fair when employed for a practical end believed to be good; it is quite irrelevant to the discovery of political truth, and does not concern us. We are only concerned with his real political convictions and the reasons urged in favour of them, which are frequently original, always weighty, seldom couched in abstract or absolute form, but "clothed in circumstance."

Then there is what is called the Analytical Method, employed by Bentham and Austin in jurisprudence and political science. It consists rather in the logical process of analysing, defining, and dividing the leading legal conceptions, such as sovereignty, law, and the conceptions which law implies — command, duty, sanction, legal right, act, will, intention, etc. It analyses all these notions, assigns their divisions and subdivisions,

defines alike the higher and lower conceptions. We obtain from it a skeleton scheme of positive law; its various kinds, their divisions and subdivisions, with all the ideas and principles involved in their different grades and classes, genera, and species. Now, all this process, according to Maine, is scientific; it is even extremely useful to the student in furnishing clear and distinct ideas; it has a wonderful effect in clearing the brain (*Early History of Institutions*). But he says the method is inadequate to furnish us with a complete and real science of jurisprudence, because it does not answer the real questions, the questions we are most interested in asking—Why did men impose these commands on themselves? how are they connected with each other, and especially those that precede with those that follow? Analytic jurisprudence cannot answer these questions; the present analysis of our notions of a Will, or Property, or Inheritance, or Marriage would only hold for the present time; in the past these notions were all very different. The real question relates to the origin and stages of all these things, a question which only history can answer. In short, the suggestion is, that the Analytical Method serves only to clarify our legal or political ideas, to arrange them in order, to classify and catalogue them; it gives us a fuller possession, a clearer distribution of old knowledge, but does not add to it, which it is not in the nature of mere analysis or dissection of ideas to do; for when certain assumptions have been made, Maine thinks that the "great majority of Austin's positions follow by ordinary logical process."

Now, there is a certain truth in this view; and some writers are perhaps rather prone to think analysis is the one way to political wisdom, and Austin and Bentham rest too much on this method. But it is a mistake, on the other side, to think that new truth cannot be reached by careful analysis, supported by deductive reasoning. We have an example to the contrary, where Professor Holland, in his analysis and theory of contract, corrects Savigny's view. Finally, there are many examples in the *Leviathan* of Hobbes (the first to employ the method) of a successful use of acute analysis and ingenious deduction.

§ 3

So far as to the men and their methods. As to the books dealt with they are:—The *Leviathan* of Hobbes; the *Civil Government* and *Letters on Toleration* of Locke (chiefly the first letter); the *Reflections on the French Revolution* and *An Appeal from the New to the Old Whigs* of Burke (those parts dealing with the general questions of political theory and his Philosophy of the Revolution); the *Theory of Legislation* of Bentham (first part), the *Principles of Morals and Legislation* (only his theory of morals, much of the rest being repeated in his other book), also his *Plan of Parliamentary Government* (which can be briefly outlined); the *Representative Government* of Mill, an able and practical book, which is rather fully analysed; the once celebrated Book VI. of his *Logic*, entitled "The Logic of the Moral and Political Sciences," which contains his theory of progress, and an imperfect account of the Historical Method—the only part that concerns us; finally, the *Ancient Law* and *Early History of Institutions* of Maine, which contain the best English specimens of the application of the Historical Method; also his *Popular Government*, which partly draws upon history, to suggest the conclusion that democracy is by no means to be considered the best form of government or the one most likely to last longest. Of all these books, so far as they concern political science, a more or less full analysis is given; the aim being in all cases, by omitting irrelevant or unimportant parts, dwelling on the essential, and by condensing where possible the remainder, to give a summary of the systems within a moderate space.

An exposition by means of abstract and analysis of these famous but much unread books may, it is conceived, be, if not interesting, at least useful to the student, as a saving of time, and, in the case of Bentham and Locke, of patience in addition, for there is much repetition and surplusage in both; in fact, of Locke's *Letters on Toleration* it is eminently true that "the half is worth more than the whole," for the additional prolix matter weakens his clear and vigorous *First Letter* and draws him into inconsistencies. Again, in Burke's

Reflections, though all is good for its purpose, there is much that does not concern a reader who merely desires to know his political system. The like applies to Hobbes' book, the greatest of all. I do not feel certain that the reader will always find this expository matter interesting. But I think he sometimes may; and I hope that he will find the critical parts, which are fully half of the book, not uninteresting. But however this turns out, it was more to supply the criticisms than to furnish the expositions that the book was written, and indeed without the former the reader would be left in many cases in a chaos of conflicting opinions without guide or testing principle. It is, moreover, in the critical parts that my own opinions on the chief political questions of our time, and any novelty of view or of presentment, if any such there be in the book, are to be found.

Perhaps it may be well to add that the reader will find, in addition to the usual topics of political theory, certain other subjects not usually treated of in a book bearing a title like the present one. The reason is, first, that they are raised in the books under consideration; secondly, they are themselves in their nature important and interesting, and serve further to give variety in a work which in its nature tends to repetition of subject.

Thus he will find an exposition of the theories of progress of both Mill and Maine, with both of whom the question of progress is fundamental in their political theory. With Mill, in fact, the question of the "best government" is simply the question as to which best promotes progress, progress being conceived as largely referring to the elevation of the individual man—a very different thing from the "greatest happiness of the greatest number" of Bentham, which, moreover, is reduced by him (in opposition to the sayings of sages) to an abundance of material things, security for their possession, and a moderate equalising of them. Maine has a quite different theory of progress from Mill's, or rather he has several vacillating views, while his best and final one is substantially a corollary from Comte's, that progress depends on the predominance of the scientific spirit. He further holds that it is confined to few

peoples, and even with them relates only to a small part of life. Mill, on the contrary, believes in boundless progress in all directions, and also that man is only at the beginning of his career, only in "the go-cart" as Tennyson in an early poem expressed it. That both the extremes of Mill and Maine are wrong on this vital question is maintained in the following pages: that in some important directions progress is all but finished, that in others much remains to be made, which will probably require a long time.

The reader will also find the question of the possibility of a Science of Society discussed, because the question is treated by Mill in connection with the theory of progress, and it is in fact intimately related to it. There is likewise a chapter on Bentham's Utilitarianism, because his ethical theory underlies his theory of legislation and government, and because every political theory has an underlying ethical theory, of which latter it is necessary to know something before we can understand the former. I have also found it desirable to enter a little into the Philosophy of English History, for the purpose of criticising certain theories of Mill and Bentham, especially as both of them make appeal to our history, in the philosophy of which, as regards the interpretation of the larger movements or the bringing them under a plausible theory of causation, neither appears to be particularly strong. In like manner I have been obliged to go somewhat into the philosophy of the French Revolution in order to correct Burke's necessarily imperfect estimate of the nature and causes of that supremely important event, the results of which have been already so great, and which in their turn, acting as causes, may lead to still greater issues in the future.

ENGLISH POLITICAL PHILOSOPHY

HOBBES

I. ON MAN

§ 1

In the year 1651 there was published in England a very remarkable book, one of England's Bibles, an original and creative book of the same order as *The Novum Organum* of Bacon, or the *Essay on the Human Understanding* of Locke, and one which may even challenge comparison with the best works of the great contemporary continental thinkers, Descartes, Spinoza, or Grotius.

This book was the *Leviathan* of Thomas Hobbes, in which the scheme of a moral and political philosophy is not merely clearly and boldly outlined, but in large measure filled up, and the latter part in fact more completely than in any work that has since appeared on the subject, almost to our own days. Still more we have in this book the germs, and something more, of a sociology, or science of society, as conceived by Comte and Herbert Spencer, and the analogy of society to an organism or living body pointed out, with some of the leading truths depending on that useful analogy set forth two hundred and fifty years ago. There are even the rudiments of a philosophy of religion indicated by this early rationalist, and more than the rudiments of a science of law or jurisprudence as developed afterwards by Bentham and Austin. There is, indeed, scarcely a later English

thinker on morals or politics who is not either directly indebted to Hobbes, or who does not find himself anticipated in some of his larger ideas and views. Even Carlyle's admiration for a strong monarch and Burke's description of political method are alike to be found in Hobbes. The book is, in fact, a treasury of moral and political wisdom, for the most part unknown even to the educated classes, but well known since his time to thinkers who have generally been rather more desirous of refuting Hobbes than acknowledging their obligations to him. Thus Bentham, whose best thoughts on jurisprudence are in Hobbes, refers to him only to refute and discredit him. Austin is, however, a magnanimous exception, as he fully acknowledges the greatness and originality of Hobbes' genius, though somewhat more charily his own indebtedness to it.

It may appear a strange thing that, before Hobbes, no original and independent work had appeared, for nearly two thousand years, on such important subjects as ethics and politics—none since the time of Aristotle, if we except some of the writings of St. Thomas Aquinas and the *Republic* of Bodin (1576). The reason is that until after the Reformation there was no felt want for moral or political speculation. As to morals, the Christian world lived on the traditional morality taught by the Church, founded partly on Revelation, partly on the ethics of Aristotle, more on her own long experience of human nature; while, in regard to politics, on the fundamental question of the relation of sovereign to subject, men were contented with the teaching of the Church, that kings ruled by divine authority and command, provided they duly acknowledged the claims and authority of the Church. In fact, loyalty to king or feudal lord was habitual and seemed natural, unless the rule was very oppressive, or unless their immediate lord rebelled, which in England, as elsewhere, he sometimes did. Then the common law and canon law settled private legal rights. After the Reformation, in Protestant countries, the Bible and the Church Catechism supplied a morality and a political theory for a time. Still, the general ferment, and the shaking of men's traditional beliefs and religious practices produced by the Reformation, extended itself to morals, and even to the fundamental questions

of society itself. Once the spirit of doubt or dissent appeared, it was hard to stop it. The Anabaptists were a political as well as a religious sect, and in their rising in Germany attacked property, and declared for communism, as in the primitive Church. In the chaos of opinion it became a most important matter to inquire if a natural scientific foundation could be found for religion, morals, and politics; a foundation on which a sound structure could be reared, that would remain firm no matter what people thought about supernatural religion. Could the great truths of natural religion be discovered by reason? Could morality be placed on a base independent of the teaching of all or any of the Churches? Could the origin of government and law, and the relations between governors and governed, be ascertained by reason apart from revelation, so that even doubters or deniers of revelation would be obliged by their reason to accept the conclusions as sound, and generally beneficial? It was from the urgent need of answers to these questions that modern philosophy in all its branches, metaphysical, moral, and political, was born; and Descartes and Spinoza attempted to supply the answer to the first of these, the metaphysical, which included the question of natural religion; Hobbes the answer to all three of them, but especially the moral and political questions which with him are inseparably connected.

It is also to be noted that in addition to the need of knowledge there was a spirit of disinterested curiosity in the air, a desire for knowledge for its own sake, as well as for the advantages, "the fruit," as Bacon called it, which it might bring to men. From the Renaissance onward, there was this strong desire not merely to acquire the best classical learning, but to make conquests of new knowledge, and vast dreams were aroused and stimulated by what had already been discovered in astronomy and physics. The thirst for knowledge showed itself in all the great minds of that great, hopeful, and agitated seventeenth century; in Bacon, Galileo, Descartes, Spinoza, Gassendi, as well as in Hobbes. Descartes was not merely an abstract thinker, but, like Bacon, he dreamt of great discoveries from experiment, just as Bacon dreamed of moral and political

discoveries, as well as physical; while Hobbes, the former secretary and pupil of Bacon, had even projected a vast and complete system of philosophy (something after the fashion of Herbert Spencer's), embracing physics, metaphysics, psychology, and civil government, including the duties of subjects. He did not finish this work, for, as he tells us, whilst he was "contriving, ordering, and passively and slowly composing, it so happens in the interim that my country, some few years before the civil wars did rage, was boiling hot with questions concerning the right of dominion and the obedience due from subjects, the true forerunner of an approaching war, which was the cause, the former parts being postponed which ripened and plucked from me this third part." And perhaps, fortunately; for the part dealing with physics, at a time when physics was in its infancy, must have been of inferior importance. It would indeed have been desirable to have had from Hobbes his complete views on metaphysics, on account of the sanity and clearness and depth of his mind, and on psychology, on account of his acuteness and originality, as shown in some specimens which appear in the *Leviathan*. Fortunately we got the third and most important part, some of which had already appeared in 1642, but which then made no great impression. The substance of it, however, much improved and enlarged, he gave to the world afresh in 1651, just when the civil war which temporarily settled the question of the rights of sovereign and subject was ended by the defeat of the Royalists at the battle of Worcester.

§ 2

The book is divided into four parts: the first on Man, the second on Commonwealth, the third on a Christian Commonwealth, the fourth on the Kingdom of Darkness.

We are mainly concerned with the second, but as the actions of man in political societies or commonwealths depend on the nature of individual men, a brief preliminary account of the latter, such as psychology reveals it, is desirable and necessary. It should be observed, however, that mental science, or psychology, hardly existed before Hobbes' time, and that in fact he

himself in this book, whilst drawing the portrait of man, lays the foundation of it.

The portrait drawn of man in general, of human nature as it essentially is, if not a very flattering, is a very remarkable and original one. It was the first original attempt since the time of St. Paul's Epistles to draw man as he is, and this time from a new point of view, the point of view of physiology and psychology, and by one resolved "nothing to extenuate or aught set down in malice," but to put in only what he saw, although he may have made omissions that he did not see.

And first, man is an intellectual being; that is, in addition to his five senses, which convey impressions from the external world, and furnish the raw materials of ideas and experience, he has imagination, which is a fainter kind of sensation, "decaying sense," as Hobbes calls it, and memory, which is only imagination over again, plus the feeling of some past time to which the image is referred. Lastly, we have "trains of imagination," or, as we now say, trains of associated ideas, which are either "guided," that is, linked together according to some principle, or "unguided," as in reverie, when the imaginations come and go at random. These, namely, sense, imagination, memory, trains of ideas, are all the native mental faculties that man possesses, and all men possess them. There is "no other thing necessary for exercise of them, but only to be born a man." From these together we get experience and prudence. And here we have the first account of the origin of knowledge from mere sensation, a theory which Locke improved upon when he affirmed that all knowledge came from sensation and reflection.

Any other mental faculty that we possess we owe to the invention of language, "the most noble and profitable invention of all others; for as to printing it was no great matter." Amongst these faculties is reason, or rather the faculty or power of reasoning, by which our knowledge and our native faculties are vastly increased, although the advantage is almost counterbalanced by the "privilege of absurdity" which it carries with it, "which appears in no other creature but in man, and most of all in philosophers."

Reason is, however, when rightly used the mother of all the sciences, which extend no further than as their subject-matter is susceptible of addition and subtraction. This applies to arithmetic, geometry, mechanics, logic, even law and politics; for all arithmetic is contained in the four elementary rules, but multiplication can be reduced to addition, and division to subtraction. The like holds of geometry, which deals merely with the addition and subtraction of lines and figures; of logic, which deals in like manner with the three propositions of syllogism. Nay, even of politics it is true; for writers on politics "add together pactions to find men's duties, and lawyers put together laws and facts to find out what is right and wrong in the acts of private men."

Truth in the sciences depends on right definitions purged from ambiguity, as in geometry, which is a type of all the other sciences; a doctrine which, though there is some truth in it, has great error, for assuredly his own practice transcends his theory, that all truth depends on right definitions, and that reasoning on political and moral subjects extends no further than addition and subtraction. For whence, one might object, comes the right definition?

But let us turn to his more interesting, and from our point of view more important, picture of the moral man, as he issues from the hand of nature. This delineation is more faithful, is more true to life, than the intellectual one. The outlines are firm and sure, are drawn with a master's hand. Unfortunately some important features are omitted, whose omission changes the whole expression and character, and give us only a maimed and imperfect, not the whole and real man. It is true, he was only bound to describe the man of the far past, the primeval man, who would presumably be more like his sketch; but Hobbes also thinks the natural man beneath the civilised man, the same at all times. It is this universal being he is trying to describe, and the charge brought by later moralists and psychologists is that he omits important features.

He notes truly, and he was the first in modern times to note it, that man is moved to action, not by his intellect or reason, but by his appetites (including aversions), his desires

and passions. In a remarkable chapter on "The First Beginnings of Voluntary Motion" he brings out this clearly and vividly. Fundamentally, man, like all the animals, is a being who seeks naturally and instinctively his own conservation. He is a self-interested, or if you choose to call him so without implying blame, a selfish being. His interests are all bound up in, all derived from, all centred in, self. All his springs of action aim either at self, its preservation, enlargement, or greater gratification. The first springs of action are the appetites, which evidently refer to the preservation or pleasure of the individual. Then come the desires, which are various, but which can mostly be reduced to the one predominant one, the desire of power. This desire, which aims at the expansion of the self or ego, besides its primary form, takes all sorts of forms, the love of wealth, of knowledge, of honour; even benevolence is by him resolved into "love of power and delight in the exercise of it."

He does not allow of any disinterested quality, any quality whose aim is the direct good of another without thought of self; he omits parental and filial affection, friendship, or love of one man to another. He does not admit of sociability as an active original quality, by which men are attracted to each other, altogether apart from any thought of the advantages association might bring. It is true, he recommends sociability on grounds of reason as a virtue, but it is not based on a natural primitive feeling or instinct. He distinctly denies that men have any pleasure in each other's company, but, all the contrary, where there is no power to keep them all in awe, that is, where there is no law or government; and he gives ingenious reasonings in favour of his view, which the dangerous experience of people who have been in new settlements on the outskirts of civilisation, where law is at a distance, tends somewhat to confirm. Still there is to be set against all this the undoubted fact of sociability, which has played a great part in drawing men originally into society and maintaining them therein.

Even compassion, the sacred feeling which has done so much to humanise our world, and to mitigate its worst aspects, he

resolves into fear or "grief at the calamity of others, from the imagination that the like calamity may befall ourselves," that is, an accidental accompaniment of the original feeling of compassion he makes the main thing; while with better reason he makes the passion of fear, the fear of spirits invisible, the root of religion, or rather of what he calls the "religion of the Gentiles," that is of all, except that of the Jews.

These are the chief qualities in man. Here you have his chief features, moral and mental. He is the same at all times and in all countries. Moreover, and it is an important point in Hobbes' theory, men were originally all equal or nearly so. His proof is interesting. Men were originally equal (as well as free), because men are so still in the main, the apparent differences coming from education. "For when all is reckoned together, the difference between man and man is not so considerable as that one man should therefore claim to himself any benefit to which another may not pretend as well as he. As to strength of body, the weakest has strength enough to kill the strongest by secret machination or confederacy with others"; and "as to the faculties of the mind," he adds, "I find yet a greater equality amongst men than that of strength. Leaving out of count the arts founded upon words, and especially that skill of proceeding upon general rules, because they are not native faculties, men are on a tolerable equality." True, they do not think so; but this is due to a vain conceit of their own wisdom; others they readily allow may be "more witty, eloquent, or learned, but not more wise; for they see their own wit at hand, others' at a distance." But the best practical proof of equality is that each one is satisfied with himself and would not exchange with another, "as there is not ordinarily a greater sign of the equal distribution of anything than that every man is contented with his own share"; and of course if men are still so equal, all things considered, they may be assumed to have been still more so in their original condition, before they had learned the "arts grounded upon words" which make so great apparent differences between them.

Now suppose a number of these self-conserving, mutually

repellent, but equal human atoms existing in a primitive country, what would happen? They would not be drawn into company from love or sociability. On the contrary, they would rather keep scattered and away from each other so far as their repelling nature goes, like the former savages of Australia. The "kindly human face" as it appears to the poet does not exist for them. What would happen Hobbes will tell us; and if you grant his account, or even half his account of man, to be true, he will tell us rightly what must happen.

§ 3

It follows from the presumed equality of ability that if any two (or more) desire the same thing which they cannot both enjoy, whether a plot of land, an attractive woman, or whatever else be desirable, "they become enemies and in the way to their ends, which is principally their own conservation, sometimes their delectation only, endeavour to destroy or subdue one another." It follows rigorously if these units were such as postulated by Hobbes, egoistic equal beings, necessarily seeking their own conservation and living before any restraining law or customs existed, that "if one man plant, sow, build, or possess a convenient seat, others may probably be expected to come with united forces (it being their interest, in spite of their 'grief' in each other's company, to unite for aggression), and take from him not only the fruits of his labour, but also his liberty and even his life."[1]

Moreover, the successful invader is in the like danger from another. From this distrust or "diffidence of one another there is no way so reasonable as anticipation; that is, by force or wiles to master the persons of all the men he can so long, till he sees no other power great enough to endanger him, and this is no more than his own conservation requires and is generally allowed"; also because there are some that would very gladly rest with certain possessions provided they were sure others would do the same; but because they have not this

[1] See Chap. xiii.—a short but noteworthy chapter on "The Natural Condition of Mankind as concerning their Felicity and Misery."

assurance they "go on increasing their power that they may not be conquered. Consequently this augmentation of dominion must be allowed to such a one as being necessary for his conservation."

Then, finally, "men have no pleasure, but on the contrary much grief, in keeping company where there is no power to overawe them all." Because everyone wishes others should take him at his own valuation, and accordingly on any signs of slighting or contempt will quarrel with them to "extort a greater value from them by damage and from others by example." Nay, in this case they will quarrel for the merest trifles, for a word, a difference of opinion, a smile, any the smallest mark of disrespect or undervaluing either of the individual or of anyone or anything related to him. The result of the three things together is perpetual violence, and the war of all with all. Not that there is in the State of Nature always such actual and indiscriminate war of all the human atoms, but there is always a disposition and soon a temptation to it, and there is no long time without some; just as we reckon it a time of foul weather, though it be not incessant but generally and with short intermissions. It follows that what has place in a time of war, when every man is enemy to every man, the same has place in a state of things where there is no security save from one's own strength and invention. In such a state there could be no "industry" or "culture of the earth," the fruit being uncertain; "no navigation nor use of the commodities that may be imported by sea; no commodious building; no instruments of moving and removing such things as require much force; no knowledge of the face of the earth; no account of time; no arts; no letters; no society; and, which is worst of all, continual fear and danger of violent death; and the life of man solitary, poor, nasty, brutish, and short."

This argument, Hobbes allows, is drawn from the passions, a part of the nature of man. Do you doubt its truth, and ask for confirmation from fact or experience? Observe then what a man even now in society does: how taking a journey he goes armed for fear of robbers, how when he sleeps he locks his doors, how in his own house he locks his chests. Do these

"acts" not testify to his "diffidence and distrust of his fellows" and accuse him as much as his (Hobbes') words? Does it not show some signs of the natural man beneath the veneer of the civilised man? But, after all, neither accuses man's nature, but only affirms that man is an egoistic being moved by his passions and desires, "which are no sin any more than the resulting actions, till they know a law that forbids them; which, till the laws be made, they cannot know."

He allows that such a state of war of all with all was never general over all the world. Nevertheless it is the natural state till men emerge from it. And the savages of North America so lived without government and in the dolorous condition already described (if not quite in a war of all with all). But if you wish to see approximately but most decisively the original nature of man, and what he was before he entered into civil society, what he is still fundamentally, observe the terrible state of things that ensues when the bonds of law and government are relaxed in a civil war, with numbers of "masterless men" animated with a spirit of rapine and revenge. Further, existing States, which are but aggregations of individuals and families, and reflect the essential nature of the individuals, are in a state of nature, which is a posture of war, with each other, with frowning forts and guns pointed all along the frontiers. Here we have the state of nature still subsisting between nations, only that it is a considerable improvement upon the war of all with all, inasmuch as it permits peace and industrial pursuits within each State as well as intervals of peace and commerce between neighbouring States.

It further follows, according to Hobbes, that in the original state of nature there could be no injustice, because there was no civil law, and injustice is properly the violation of law, and especially the non-fulfilment of contract. In the state of nature, as in the state of war generally, fraud and force are legitimate, nay, are the cardinal virtues, because they lead most surely to the preservation of the individual, and such preservation is the first aim and end of nature. It follows also that there could be NO PROPERTY, no "mine" and "thine" in such a state, but "that is every man's that he can get; and for so long as he can keep it."

II. ON COMMONWEALTH

§ 1

Such was the ill condition in which man by his mere nature was actually placed. There was, however, a possibility of his getting out of it (apart from the conquest of all within reasonable range). Men's passions urge to war, but some of them point to peace, *e.g.* fear of death and the desire of necessaries and conveniences, and hope by industry of obtaining them; thus early appearing traces of the "economic man" animated by the desire of wealth as a check on the passions prompting to war. And then man in this original condition had Reason, though it be not a native faculty, and reason, the mother of science, "suggesteth convenient articles of peace."

These articles of peace are no other than the common moral virtues, which were morally binding in the state of nature, which, on the assumption of equality, could be deduced by reason, but which men's passions prevented them from following. The first law of nature is to "seek peace and follow it, but failing, by all means we are to defend ourselves." The second law follows: that, to the end of peace, a man should be content to abandon his right to everything so far as others do the same. The third law is that men perform their covenants; the fourth enjoins gratitude for favours rendered; the fifth, general complaisance; the sixth, pardon for offences on repentance; the seventh prohibits excessive revenge or cruelty; the eighth, words of contempt for others or signs of contumely. Add an acknowledgment of equality; no reservation of rights that is not general; that judges should deal impartially; and one or two more of minor import to complete the list.

These laws of nature prescribing justice, mercy, gratitude, etc.,

may be all summed up: Do not that to others that you would not have done to yourself, which is the golden rule of the Gospels put negatively. They hold indeed in the state of nature, they are obvious deductions of the reason, but being contrary to men's passions,—self-partiality, pride, desire for revenge, for glory, etc.,—will not be observed without a common power to compel observance. And it would be unreasonable to expect one man to observe them where the generality disregarded them. This would be merely "offering himself as a prey and to his certain ruin." As to covenants (contracts), in particular, they are but words and idle breath, without the public sword, of "no strength to secure a man at all." And that property would be insecure in such a state is shown wherever men have lived in small families without any central (or civil) government, in which robbery has been held in honour; and no laws being regarded but the laws of honour, they have left only to those robbed their lives and instruments of husbandry; and the like still holds of kingdoms.

A union of a small number will not suffice in such a state for general security. The number necessary depends on the strength of the possible enemy, and must be sufficiently great to deter him from attacking it, and be the number ever so great, if they act according to individual judgments and impulses they nullify each other, and may be easily subdued by a smaller number; and even if there be no common enemy they will make war on each other without a superior controlling power. It is certain that such a multitude or mere aggregation will not observe the laws of nature, justice, mercy, etc., in the absence of a common coercing power; for if they could, a still greater number or even all mankind might do so, and there would be no civil government at all, and no need for it, as there would be peace with the original natural freedom over the world.[1]

Nor is it sufficient that they have a temporary head as in one battle or in one war (as was sometimes the case with the Red

[1] This is the ideal of our present anarchists and even in the remote future of the disciples of Herbert Spencer, who consider government at present a necessary evil, but who expect as men morally improve that it will be reduced to a vanishing minimum.

Indians and other savages) because afterwards they are liable to the old evils of internal war.

True, certain creatures called "political" by Aristotle, such as the bees and ants, live together harmoniously and without the war of all with all. They carry on their common concerns without government, so far as we can see (though there is a queen bee with limited functions). They are directed only by individual judgments and appetites (instincts rather), and why not men? There are several differences, both natural and acquired, particularly the passions of men, which make them intractable and quarrelsome, unfaithful to promises and covenants, without a government to keep them in order. On all grounds, therefore,—the nature of man and his passions urging to war; the insecurity of life and possessions where men have lived in scattered families; the futility of a mere union of numbers without one presiding and coercing will and government, and even with such if it be only temporary,—a common and permanent coercive power is called for, that men may have peace all their days and not merely for a time.

Now, there is but one and only way to create such a common coercive power, and that is to confer all their powers and united strength upon one man or one assembly who may "reduce all their wills by plurality of voices to one will." In other words, "they appoint one man or assembly of men to bear their person; and everyone to own and acknowledge himself to be author of whatsoever he that so beareth their person shall act or cause to be acted in those things which concern the common peace and safety; and therein to submit their wills everyone to his will and their judgment to his judgment." This is done by "covenants of every man with every man. . . . As if every man should say to every man, 'I authorise and give up my rights of governing myself to this man or to this assembly of men on this condition that thou give up thy rights to him and authorise all his acts in like manner.'" And in this way is generated a commonwealth or state, which is a multitude united in one person (whether one man or assembly) for the purposes above named of peace and safety, which person is called the sovereign and everyone else his subject (chap. xvii.).

The sovereign power may be conferred as above explained. But it may also have its origin in force or conquest according to Hobbes, and that in two ways, as when a man governs his children and their children (as in the Roman family or the patriarchal family of Genesis), or by conquest, where the conqueror spares the lives of the conquered on promise or covenant of obedience to his will.

§ 2

Such is Hobbes' famous theory of the origin of commonwealths and of governments, and, as a consequence, of law, which is the command of the sovereign, imposing salutary restraint on the individual for the general ends of peace and safety. Governments having thus originated, he proceeds to draw important inferences, nearly always logically deduced, and often absolutely true generally, but before considering which it is desirable to pause for a moment to examine his theory of their origin.

In the first place, it is generally allowed that his psychology, which leaves out the fact of sociability, a natural principle which attracts men to each other, is defective. It is defective on the moral side in omitting disinterested qualities, but it is here defective on the political and social side in omitting a principle, which more even than language is a bond of social union, and which made some kind of society possible before coercive governments were formed. And this is admitted by Locke, who, like Hobbes, believes in the social contract as the origin of governments. The "diffidence" of each other, of which Hobbes speaks, would also exist in the state of nature, also the "grief" or uneasiness in each other's society, but only occasionally, the sociability being a more generally diffused fact, being in fact a *sine qua non* of any permanent society, political or natural. A Hobbist might indeed deny the universal sociability by pointing to some savage tribes like those of Australia or Tasmania, who lived in the isolation of single families; but as matter of fact such cases have been extremely exceptional. Moreover, the question is one of psychology as well as of obser-

vation and history, and psychology tells us that man is a sociable animal even in the stage of childhood, a "political animal," as Aristotle calls him, and what he is he always was, according to Hobbes. But if this be admitted, a different account of the state of nature than the "war of all with all" would have to be given, as, in fact, later speculators on the state of nature, like Locke and Rousseau, have pictured it quite differently, the latter representing man in it as a very noble and amiable being, and life in it as the happiest possible for him. Moreover, Sir Henry Maine tells us that the little we know of the primitive man is rather against the alleged fact of his quarrelsomeness. Still he admits that the tribes and the heads of tribes were quarrelsome, though individuals inside each group lived together amicably under a reign of custom. The difference would be that instead of a war of every man with every man, there was a state of internecine war of every tribe with every tribe so far as they came within each other's range. This was indeed very much the case, only it was ended not by a social contract made by all the chiefs, but sometimes by leagues, but far more frequently by conquests, the survival of the fittest and strongest, and the slavery of the rest.

Then as to the alleged contract or covenant, it was pointed out long ago by Hume that there was no proof that it ever was made. It is historically baseless. It may seem strange therefore that not only Hobbes, but Hooker and Grotius before Hobbes, all held it, that after him Locke and Hutcheson and Blackstone held it, while there are even some traces of it in Burke's political writings. And the reason is that there are only three possible explanations of the origin of government, namely, either force, the voluntary conferring of it by the people on one or a body, or finally patriarchal authority, arising naturally, gradually enlarged, and as the family expands made hereditary. Hobbes was probably not aware of the latter;[1] he was aware of both the others, but shows that they may be reduced to one, when the conquered people consent to be governed in order to save their lives; this case being assimilated to the case primarily and mainly discussed where all or the majority agree to transfer

[1] Though he speaks as if he was aware in chap. xvii. and chap. xx.

their powers in the natural state to the sovereign one or few.

The truth is that force was the origin of most existing governments. Let us suppose, however, that they originated in a social contract as conceived by Hobbes, and let us try thence to see his theory of sovereignty and sovereign attributes.

§ 3

Existing governments have originated in force, not in a social contract. But each and every government must have certain powers or "rights" or "faculties," to use Hobbes' words. Let us see how he deduces these from the original social contract and the ends for which it was made.

In the first place, having called into existence one form of government, the covenanters' power of creation is gone. They cannot, without the consent of the sovereign, change their mind and appoint another, as the earlier agreement vitiates or makes null a later one. They cannot therefore lawfully or in reason disobey him (supposing the sovereign to be an individual), or attempt to depose him, not even if he acts arbitrarily and tyrannically. He may act arbitrarily, take their property, restrict their liberties, imprison their persons; it is not in general his interest to do so, but should he do so resistance would be unlawful and wrong; as a cure, it would be worse than the disease or evil, while it would defeat the end for which they appointed him sovereign, as it tends to bring back the war of all with all.

In the second place, the sovereign is necessarily appointed unfettered by any condition or covenant on his side, whether expressed or tacit. The sovereign power is necessarily unlimited in whosesoever hands it is placed. The sovereign is only subject to the law of nature; if he violates it, he is responsible only to God. If the sovereign were subject to any earthly check he would not be sovereign, but that power that could impose the check would be the sovereign. The hands of the sovereign cannot therefore be tied by either constitution or fundamental laws, the acceptance of which

would be equivalent to a covenant on his side. For a second and stronger reason the sovereign cannot covenant with the people, because the sovereign is the people, bears their person, is their selected and authorised agent, whose acts are consequently their acts (according to the maxim, whosoever acts through an agent acts through himself). Since, then, the sovereign stands for the people and is the people, he cannot make a covenant with the people, which is an absurdity very evident, where the sovereign is itself the people, where it is clear they cannot make a covenant with themselves to do or to forbear doing this or that.

The third attribute of sovereignty follows easily: that dissenters (minorities) must concur in the voice of the majority, accept the sovereign appointed, and avow his acts, or "be justly destroyed." Every dissenter must submit to the agreement of the majority, "or be left in the condition of war he was in before, wherein he might, without injustice, be destroyed by any man whatever."

Fourthly, the sovereign instituted can do no injury to his subjects, because what he does is by the authority of the subjects who have given him a free hand (in all that concerns the end of the institution). The legal maxim, "the king can do no wrong," is only another form of this statement, because he has been authorised to do what seems good to him, and authorised by the supposed injured person, who is thus the author of the supposed injury. The sovereign may commit inequity, but not injustice. That is, he may violate the law of nature and reason, but cannot ever act contrary to law, since he is the source of law, which he can always change to agree with his will and even arbitrary caprice. So that neither constitutional nor civil law can ever be pleaded against the will of the sovereign, but only the law of nature, and the law of God which agrees with the law of nature.

Fifthly, if the sovereign be an individual he cannot justly be punished in any way by his subjects, still less put to death; because to punish the sovereign for actions authorised by the subjects is unjust and cruel.

Sixthly, it belongs to the sovereign to judge what speech or

writings shall be permitted, inasmuch as men are moved by their opinions, and therefore to govern men well their opinions must be governed. Truth ought indeed to be mainly regarded, but doctrine repugnant to peace and concord that provokes rebellion and civil war cannot be true.

Seventhly, it belongs to the sovereign power to make laws respecting property, which does not exist in the state of nature, and which is a creation of the sovereign, as also laws regarding the acts a man may do and may not do, in fact to make the civil laws of the particular State.

Eighthly, the right of making war and peace, and of levying the necessary expenses, the right to the supreme command of the militia, or armed force of the State, "because the command of the militia alone makes him that hath it the sovereign."

To these add the choosing of councillors, ministers, magistrates, and officers, both in peace and war. Being charged with the end, peace and defence, he must have power to use such means as seem most fit for the end: the power of rewarding with riches; of assigning titles of honour or dignities; and the power of punishing.

These are the attributes of the sovereign authority; such the marks of sovereignty; by these you may judge where the sovereign power is placed. These powers are incommunicable to other hands, and they are inseparable. Certain other powers may be transferred, as the power to coin money, and yet the power to protect the subject may remain, but not the above-named powers. If the sovereign part with the command of the militia, in vain he retains the judicature; if he parts with the power of raising money, the command over the militia is in vain for want of means to meet its expenses; while, if he surrenders the government of doctrine, "men will be frightened into rebellion with the fear of spirits," or by some bold speculators in their books teaching sedition and inciting to rebellion.

These attributes all hang *solidaire*, everyone supposes all the rest, not one can be parted without nullifying the others as regards the end intended, the conservation of peace and justice. They all belong to the sovereign, whether one or a body. Splitting them, dividing the sovereign attributes, and conferring some

on one power and some on another is a sure source of confusion and civil war. Wherever it is done we have "the kingdom divided against itself, which cannot stand." It was the belief that the sovereign attributes were shared out amongst the King, Lords, and Commons in the English constitution that caused the civil war. But the people have been taught a painful lesson, which he thinks will be "generally acknowledged at the return of the next peace, and so continue till their miseries be forgotten, and no longer, except the vulgar be better taught than hitherto they have been."[1]

§ 4

Such is Hobbes' theory of the necessary powers of the sovereign, a theory containing mingled truth and error, which afterwards had a great history both in speculation and in practice. Let us examine it more fully, as it well deserves a close examination. The attributes claimed for the sovereign or the government, the "public powers" as they are called, are unlimited powers, including the power of dispensing with or suspending laws and constitutions, power of the sword, power to control doctrine, power to make the civil laws, especially laws respecting property, the power of making war and peace, the power of taxation to provide for necessary expenses, the power and the right of coercing minorities, of choosing councillors, ministers, magistrates, the power of rewarding with riches or honour, and giving titles; and with all these powers, an immunity from all punishment, most of all from the punishment of death. Such and so great are the powers of the sovereign; on the side of the subject there is the duty of obedience, and the duty of non-resistance to the sovereign, in the exercise of these powers in howsoever arbitrary a manner.

Most of these powers all governments possess. Two of these (and two only) are dangerous, the power of acting arbitrarily where there is no constitution intended to limit such exercise of despotic power, and where there is a constitution the power of suspending fundamental laws; and the power of governing doctrines, political or religious. Some restraint on licence is

[1] Chap. xviii.

required under every government, but freedom of speech and writing should be the rule in modern civilised countries.

The first of these is a fundamental point with Hobbes: that the sovereign cannot, in the nature of things, accept the sovereignty under a condition, because to the extent of such condition it would be a limited sovereignty, that is, not a true sovereignty which would lie with the limiting power. And, in fact, granting the primitive social contract, it might have been the wisest policy for the contractors to give the sovereign, one or body, full and unconditional powers; to impose no condition, any more than the children of Israel did when they chose Saul for their king. Still they might also conceivably, as Hooker and Locke both suppose, have transferred their powers to a single ruler, subject to a condition. They might have said, "You shall be our king, and you shall have extensive powers and privileges, but you must protect our property, lives, and liberties from evil-doers, and respect them yourself. You must swear to respect our fundamental laws, and the national religion. Outside these excepted matters, and subject to those general ends, we give you full power in all other directions." This would be equivalent to imposing a constitution on his acceptance to the extent of the limitation placed on him. And in modern times, since Hobbes, we find, even in democracies, constitutions like that of the United States drawn up, intended as restraints on the arbitrary will of the sovereign many; salutary restraints drawn up by wise statesmen, that the people have consented to impose upon their will, though with a power of altering the constitution by amendments, under certain conditions intended to secure due deliberation.

But, in fact, from Hobbes' point of view, this would be conferring on the sovereign only half or part of the sovereign power, and reserving the remainder to whatever authority had power to enforce the limit. And in case the chosen one (suppose) should violate the conditions or constitution, he would on this line of reasoning forfeit his powers, the subjects would be released from their obedience, and might rebel against him. And thus with such limited and precarious powers there would be perpetual danger of civil war, to avoid which was

the original and main motive in the transfer of their natural rights and powers to the one or few.

Besides, argues Hobbes, suppose the people agreed to retain the sovereign power in their own hands, as the Roman people did in the early time of the Republic, they could not impose conditions on themselves. The Roman people, as subjects, could not make a covenant with themselves as sovereign, failing the fulfilment of which the people, as sovereign, would be deposed. This would be absurd. And as they could not limit the sovereign power if retained in their hands, so neither could they (or should they rather) transfer it with limitations to a single individual who is to bear their person. Having regard to reason, they should give him as ample and unconditional powers as they would necessarily have if they exercised the sovereign power themselves.

From the point of view of the chosen one, if we might suppose him living in a reflective age, and to be something of a philosopher, some earlier Marcus Aurelius or Solomon, he might be supposed to address the contractors who submitted conditions and limitations: "You wish me to bear your person as sovereign, to be your representative, to take upon me a great and anxious charge. You must then give me powers, full and unfettered, to do what I judge to be necessary to the attainment of these great ends of peace and security and justice between man and man. You must trust me with the same powers that you would necessarily have if you tried to govern yourselves. What you wish by submitting these conditions is really to retain part of the sovereign power yourselves (or rather the essence of the whole), and to trust me with only a part, to make a divided sovereignty, with a ruler on good behaviour, to be dismissed if you suppose he has diverged ever so little from your terms. In fact you wish to retain the essence and substance of the whole by retaining the right of dismissal, to make me your agent and dismissible servant, while you remain principal and master. And on these terms, and so understood, I must decline the honour you would give me and the fettered responsibility you would place on me."

And, in fact, at the supposed beginning of government, or in

early times on the election of a king (suppose), as when the Israelites, on the nomination of Samuel the prophet, accepted Saul as king, it would have been better to exact no covenant or condition from the sovereign; and, indeed, from what we know of history, it would be most unlikely that a rude people would think of imposing any on the man of their choice. They would probably select one who was bravest, wisest, most powerful, the ablest captain generally; and they would let him do pretty much as he pleased, just as early barbarian kings or Celtic chiefs had no limit placed on their power. "Let the Chief do what he pleases," was the rude, half-unconscious thought of the governed tribesmen, "provided he protects us from our enemies, and does justice amongst us"; which was something like the motto of the liegemen of the feudal chief, "Spend us and defend us."

Absolute monarchy did not originate in the way Hobbes supposes; but if it had done so, or however it arose, the argument of Hobbes is sound. The interest of the one and the many is largely coincident. It is his interest that the subjects be wealthy and happy and brave; it is his interest therefore to protect them against internal powerful ones, as well as against external enemies; his interest as well as theirs to find able and honest councillors, just judges and administrators, and skilful generals to assist him. True, he may overtax them, take too much of their goods, exact too much service for his own use or that of his personal friends. He would take their substance certainly for the public need as well as for his own, but then he would let no one else unjustly plunder them. He would, of course, never dream of altering their laws and customs, to which he was attached equally with themselves. Nor yet would he interfere with their national religion. Such an impious thought would never enter his head. On the contrary, he would defend their religion against all outside assailants. Only a very exceptional monarch, like a Czar Peter, would think of civilising and raising his subjects by the introduction of better customs and useful arts; and only a great legislator would think, and that but rarely, of devising new laws or institutions.

Thus there were no conditions fettering the sovereign at the first erection of monarchies. The idea would hardly arise in the mind of Hobbes' contractors under the supposed circumstances. Still less can we suppose any limiting condition in the case of government by conquest.

But the idea *did* occur to the minds of Englishmen in Hobbes' day, and it had taken possession of an increasing number of minds in England and in Scotland too when the matter of religion was touched. They saw certain great evils from unrestrained government that did not exist during the Tudor monarchies, and men were all for imposing a check which was not in Hobbes' social contract, but which they thought was contained in the principles of the English constitution, or, if not, they meant to insert a new check by a change in constitutional law. They wanted, in fact, a *new social contract* with the king's attributes curtailed, having been found to be dangerous and most disagreeable; while a few wanted the sovereign power wholly withdrawn from the king, and given to the Parliament, or rather the House of Commons; that is, some desired a limited Monarchy, some a Republic with a revised constitution.

There was a struggle which filled the seventeenth century whether the king of England should be a monarch, an absolute monarch, with all the powers that Hobbes claimed for him. The struggle was carried on with varying fortune. In 1649 monarchy was abolished, and England was made a Republic; then in 1653 came the despotic rule of Cromwell with all Hobbes' powers; then, two years after his death, in a torrent of enthusiasm, the Restoration, with the king's power but slightly checked. At the end of Charles II.'s reign he was nearly absolute, and James II. was in the like position, which he forfeited as well as his crown by attempting to carry out Hobbes' theory of sovereignty. The final result was the expulsion of the Stuart line, and the calling in the House of Hanover, the two first princes of which were content with a diminished prerogative; the attributes which they parted with passing over to the Whig nobility, and the House of Commons largely controlled by them. The sovereignty, the

summa potentia, passed to the Revolution Families for fifty years; then after another short struggle on the part of the Crown it was divided again between George III. and the Tory landowners, and our government was not unfairly described by Bentham during the struggle before the Reform Bill as an "aristocracy-ridden monarchy." Finally, after three Reform Bills, we have come to popular government; a mixture of aristocracy and democracy, with even something of monarchy in it in the person of the Prime Minister, who, if he be a great man, may exercise almost as much real power as a former king, subject, of course, to constitutional usage, a wholesome restraint which is scarcely felt.

Parliament has now got all the sovereign attributes that Hobbes claimed as inherent in the sovereign, save the power of governing doctrine, which it does not desire. It is the legal sovereign, it is not subject to any restraint except from rules of morality (Hobbes' law of nature) and constitutional usage. It is not subject to the civil law, nor even to any particular part of the constitutional law; the only check on its qualified omnipotence being, as Professor Dicey observes, the internal one coming from its own nature, and the external one, the fear of provoking resistance.[1] It is the "legal sovereign," though in a certain sense the electors are the "political sovereign," as they can reduce the members to the position of agents, and they can refuse to send anyone to Parliament unless he pledges himself to their wishes: powers, however, which they very wisely seldom exercise.

Hobbes has been blamed for granting such extensive powers to the sovereign; he has been called the apologist of despotism. But the fact is that nearly all these powers are implied in the very notion of sovereignty and government, and the ends for which it was created. Whether these ends be, as with Hobbes, peace and safety, or with Bentham the greatest general happiness, government must wield the public sword, must have the power of taxation, and alone be the judge of its amount; and since it can make any laws it cannot be restrained by any, since it can alter the constitution it is not subject to it. They are very

[1] Dicey, *Law of the Constitution*, chap. i. pp. 73–76.

extensive powers, and might be dangerously abused. In particular there is one attribute that cannot be conceded. We could not concede to any government the power to prescribe our religious belief, or to compel us to conform to any religion, nor yet the right to take our property arbitrarily, and beyond what the public service requires, without giving compensation.

The sovereign powers are not so much deduced by Hobbes from the original social contract as from the ends of government at all times, so that, even if we were now beginning government (making a new social contract), we would see the need of giving most of these powers to the government.

He may be wrong in supposing that this was the original way in which government arose, but, however it arose, its very meaning and end requires that certain powers be given to it, of the kind pointed out by him. The less the better, say some,[1] for they will be certain to be abused; and it is here only that a question arises. Hobbes has stated them in such a wide manner that they were very likely to be abused; but the real question in his time, the question in keen debate, was, Who should exercise the powers, or who should have the greatest share of them, King or Parliament; while both were willing that the powers should be wide.

§ 5

Closely connected with his doctrine of sovereignty is his remarkable teaching (chap. xxix.) concerning the things that weaken or tend to the dissolution of the commonwealth. A commonwealth well made should last for ever, at least should not die of internal disease. If it does, the fault lies in the makers and orderers for want of the art of making fit laws to square their actions by, and for want of humility and patience. Usually the people lack an able architect, and so are put into "a crazy building." That is, for want of good legislators at the first founding of states, and for want of power afterwards in the people themselves to make fit laws, the government or house will "assuredly fall upon the heads of their posterity."

[1] *E.g.* Taine, *La Revolution*, vol. iii. p. 132.

He proceeds to enumerate the infirmities of a commonwealth. The first is that which arises from "imperfect institution," which resembles the disease of a natural body from a defective procreation.

A king, to get a kingdom, is content with less than full sovereign power, less than is needed for the peace and defence of the commonwealth. William the Conqueror made this very mistake after the Conquest, when he took an oath to respect the liberty of the Church; a mistake which wrought perpetual trouble and danger on the kingdom, especially in Henry II.'s time, in his quarrel with Becket; and again, William Rufus did the like, when he enlarged the power of the barons in order to have their help, by conceding to them a degree of power inconsistent with that of the sovereign, by which they were able, later on, by foreign aid, to defy their king.

The same mistake of a divided sovereign power appears in Roman history, in which neither Senate nor People pretended to the whole power. This led to the sedition of the Gracchi and others; then to the civil war between the Senate and People; and finally to those between Pompey and Cæsar, which led to the destruction of the Republic. Such is the danger from sovereign power, limited or divided.

The second disease of a commonwealth proceeds from the poison of seditious doctrines, such as "that every private man is a judge of good and evil actions," which is only true in a state of nature where there are no civil laws, or under government only so far as relates to cases not determined by the law. But when the law has spoken, then the good and evil of actions is pointed out, the law itself is the sole measure of the goodness or badness. From this false doctrine men are disposed to dispute the rightness of laws, and sometimes to disobey them, to the distracting and weakening of the State.

Closely akin to this is the doctrine that whatever a man does against his conscience is sin, which is only true in cases where the law has not spoken; when it has, the law is the measure of the public conscience. Otherwise, as there are so many consciences, the laws might be disobeyed; so far as

they differed from anyone's conscience, the commonwealth would be distracted and torn.

A third connected opinion is that faith and sanctity come not from reason and study, but from supernatural inspiration, from which is inferred that those thus favoured can judge of good and evil by such inspiration, to the dissolution of all civil government.

These three last dangerous doctrines proceed from "unlearned divines," who interpret Scripture wrongly, and make men believe that "sanctity and natural reason cannot stand together."

A fourth opinion repugnant to the nature of a commonwealth is the belief that the bearer of the sovereign power is subject to the *civil* laws. This is not so, argues Hobbes. The sovereign is only subject to the laws of nature. "To the laws which he maketh or which have been already made he is not subject. . . . For to be subject to the laws is to be subject to the commonwealth, that is to the sovereign representative, that is to himself; which is not subjection, but freedom from the laws." If the monarch were subject to the laws, the judge who would then have power to punish him would be the sovereign; but then the judge, being subject to the laws, supposes a third sovereign to punish the second, and so to the height of absurdity, and the confusion and dissolution of the commonwealth. (It is rather a logical absurdity that results here, than a real danger to the State. He might make himself subject, like the Emperor Marcus Aurelius, who said, "though we be above the laws yet we choose to be bound by them," but he can hardly be legally subject to them, but only morally, by a self-imposed obligation, from which yet he could free himself. It would only be a danger to the State if a faction in the State tried to make him subject to the law, as in Hampden's trial, in which it was aimed at showing that King Charles, in levying ship-money, had acted contrary to the law.)

The monarch cannot be supposed bound by the law without absurdity, because he is the judge, the administrator of the law, is the agent of himself, and no man can be supposed to

order and execute his own punishment, especially as the right of pardon is lodged in him.[1]

(This has an important significance when the sovereign is not an individual. The sovereign in its collective capacity is not subject to the civil law; but could hardly violate it, could not collectively steal or murder or slander. But it could collectively murder a king, violate personal liberty, as in the time of George III., by general warrants, or in 1793 in France, rob and murder, and wrongfully imprison. Its members, whether few or many, cannot be punished for these collective acts; they are arbitrary, tyrannical, but not punishable legally. But if individual members of the sovereign body, in their private capacity, break the law, they are liable to the penalties.)

A fifth destructive doctrine is that every man has an absolute property in his goods, such as excludes the right of the sovereign. Every man has such rights as exclude those of every other subject, but not of the sovereign. The sovereign has the right to take sufficient to enable him to perform the office they have put him into, namely, to defend them against foreign enemies, and from the injuries of one another. If he be not allowed so much he cannot carry on his functions; and, consequently, there is no longer a commonwealth.

(This only allows the sovereign to claim what is necessary for his office and for the public service, not to take as much as he pleases for his own extravagances or to enrich favourites, unless he can plead that it was for the public service to have such as faithful counsellors. There is a claim here evidently liable to abuse, however reasonable in the hands of good princes, and accordingly the House of Commons had early vindicated the principle that there should be no taxes without its consent. The result may lead indeed to divided sovereignty, and ultimately to civil war, as it did when the king tried to recover the taxing power.)

[1] The argument used elsewhere by Hobbes appears unsound: that he could not be bound by any law, since he could always abrogate it, because he might be bound by the remaining ones; and unless he abrogate ALL laws, to the "confusion and dissolution of the commonwealth," he might be bound by those not abrogated.

The sixth dangerous doctrine is already implied in what has been said, namely, that the sovereign power may be divided. To divide is to dissolve, "for powers divided mutually destroy each other." And this doctrine proceeds, he tells us, chiefly from the legal profession.

But the worst danger to a State comes not from doctrines, but from *outside example*. Thus the Low Countries had established a Republic, and they were flourishing. And generally when a commonwealth seems to prosper under a different form of government, there arises the desire of imitation, even from a desire of novelty — still more if the governed think the other form preferable. This is a disease comparable in a State to "hot blood," and is frequently caused by the reading of the "books of policy, and histories of the ancient Greeks and Romans," whence the readers, if under a monarchy, derive the opinion that the subjects are all slaves, and in a popular government free men; but those living under a democracy "find no such matter." These books should be under the eyes of "discreet masters"; and the disease is to be compared to "hydrophobia."

Another disease is that which would set up a spiritual power in independence of the temporal, canons against laws. There would be two commonwealths really, with one and the same subjects, and here again a kingdom divided against itself; a collision of two sovereigns, and every subject with two masters. With these two powers in opposition there may be danger of civil war and dissolution, because though the civil power stands in the clear light of natural reason, and is generally supported by a large part of the people, yet the other may draw a great part, especially where the spiritual sanction is greater than other fears. And this disease resembles the "falling sickness," or epilepsy, because they who had it were supposed to be possessed with a spirit, that cast them into the fire or the water. So when many are troubled with this spirit, it either overwhelms the commonwealth with oppression, or casts it into the fire of a civil war.

The spiritual may not merely be put in opposition to the civil government, but also in the latter there may be more than

one soul; there may be a division of powers with co-ordinate authority and without subordination to one sovereign authority, as when the power of levying money depends on an assembly, the power of conduct and command (the motive faculty) on one man, and the power of making laws (the rational faculty) on the "accidental consent not only of the first and second, but also of a third." This, which is England's case, is a danger to the commonwealth, sometimes for want of consent to good laws, but more often from want of necessary nourishment, *i.e.* of taxes. This is called "mixed monarchy." The truth is, "it is not one independent commonwealth, but three independent factions, nor one representative person, but three. In the kingdom of God there may be three persons independent without breach of unity in God that reigneth; but where men reign that be subject to diversity of opinions, it cannot be so, and therefore, if the king bear the person of the people, and the general assembly bear also the person of the people, and another assembly bear the person of a part of the people, they are not one person or sovereign, but three persons and three sovereigns."

There is no analogous disease in the natural body. But the case resembled a man that Hobbes had seen who had another growing out of his side, with a head, arms, breast, and stomach of his own, and if he had had another growing out of his other side, "the comparison might then have been exact."

This is one of Hobbes' strong positions. A mixed monarchy with three bodies possessing separate co-ordinate powers, is a weak government and implies a weak State. It existed when Hobbes wrote; we have surmounted it, but not till after a long struggle. And the wonder is that Hobbes did not see that his view could not prevail except through a struggle with Parliament. Besides, the House of Commons preferred a weakened government to the king's arbitrary power. Its members had certain powers and privileges legally allowed, and they were not of a mind to surrender them. Rather they wished to effect a cure of the disease signalised, and which they probably knew existed, by reducing the king's power more and more. And we know that the cure came finally, but not till after the Reform Bill of 1832, from the extension of

their authority, and the diminution of the king's prerogative, and the privileges of the House of Lords.

The above are the diseases of the greatest present danger. There are others lesser. First, the urgent need for money at the beginning of a war, and the people's unwillingness to contribute, compelling the sovereign to have recourse to extreme measures, which is a disease like the "ague"; again, too great wealth in one or a few through monopolies or farming of the public revenues, which resembles the "pleurisy accompanied with inflammation and painful stitches"; the popularity of a subject, especially of a general, and that chiefly in a popular government (thus Julius Cæsar made himself master of the Senate and people of Rome); again, the immoderate greatness of a town that could furnish and pay a great army of itself (like Paris, or London, or New York now, and something like London then); also the great number of corporations resembling "lesser commonwealths in the bowels of a greater, like worms in the entrails of a natural man," which subsist on the commonwealth's strength and to its enfeeblement.[1] Add to these the insatiable appetite of enlarging dominion, exposing us at fresh points to the enemy, "wens of ununited conquests, many times a burden, and with less danger lost than kept; also the 'lethargy' of ease, and 'consumption' of riot and vain expense."

Lastly, final victory by the enemy in a foreign or civil war, so that the forces of the commonwealth no longer keep the field (for then is the commonwealth dissolved), and every man is at liberty to protect himself according to his own discretion.

This is an important chapter worthy of the student's meditation, and even of the statesman's. It is only necessary to add to what has been already said by way of comment, that the chief weaknesses that he points out in our constitution had a historical origin, and that a later history has effected the cure of a divided sovereignty. History is the explanation of the spiritual power existing alongside the temporal, and of the canon beside the civil law. He refers indeed to history, but seems not to have perceived the full significance of the reference. It explains why the feudal sovereignty was divided between the king and

[1] See Maine, *Early Hist. of Institutions*, p. 396, on this comparison.

the feudal barons, and why again, after the barons' power was broken, and the Tudor monarchs became really monarchs, there arose again a struggle for supremacy between the King and Parliament, whose authority was increasing all through James I.'s reign, and still more through the reign of his son. The evils he points out of a divided sovereignty are really evils, but there is no cure for it, except that in the long-run the stronger and more influential force in society usually wins and becomes sovereign. Strength as it proved lay with the Parliament; after 1688 with the nobility that controlled the Parliament; and after its reform in 1832 with the House of Commons, as largely representative of the great middle class, that had been growing greater and greater during the last two centuries, and most rich and powerful in the present century. But in another respect the sovereignty is still divided between the Cabinet, the House of Commons, and the electors.[1]

Most of the other diseases of this chapter our government has passed through without great hurt, even the poison of seditious doctrine, at the French Revolution. We now live under a "limited monarchy," but only in name. All the sovereign attributes have passed to the Parliament and especially the House of Commons, because the nominal monarch has long ceased to veto its measures, and the peers finally yield to its will. The Parliament has dropped the one dangerous attribute. It does not pretend to govern religious doctrine, but allows full religious toleration; nor to control political utterance, but allows widest freedom of speech and writing. The State has passed all its dangers and diseases without dissolution, though, since Hobbes wrote, many party governments in England have been destroyed. Even the "wen of ununited conquests" seems to agree with us; as since Hobbes' time we have become masters of one-fifth of the globe, with advantage both to ourselves and the subject races that we rule with their full consent and approval.

The danger from the "example" of other forms of government we have passed by. We no longer believe that the government of the United States is better than our own, or

[1] See *infra*, p. 266.

that there is magic charm in a Republic. There are some amongst us indeed who think that a titled aristocracy has too much power with us; but everyone can see that an aristocracy must exist of some sort in a Republic as well as under every other government.

§ 6

The remaining portion of the book is chiefly concerned with what we would now describe as the functions of the State.

There is a most remarkable chapter (xxx.), original and suggestive, "On the Office of the Sovereign Representative," or, as in our days we should rather say, on the functions of the State or of the Government. It is clear, vigorous, as all his writings are, and with a remarkably modern air about it.

The office of the sovereign is to be determined by the end for which government was created, namely, the "safety of the people," and by "safety" Hobbes meant not "bare preservation," but also "all other contentments of life, which every man by lawful industry, without danger or hurt to the commonwealth, shall acquire to himself."

The phrase is quite as definite as Bentham's greatest happiness of the greatest number. But how are all "contentments of life" to be assured? Not by care applied to individuals any further than by protection from injuries (that is, protection of property and person), but by a general providence contained in public instruction both of doctrine and example, and in the making and executing of good laws.

Now, here is a remarkable sentence on the sphere of government, whether monarchy or democracy, and, as will presently appear, after two hundred and fifty years we have not yet realised it. We only began some sixty years ago to aim at it, though now we describe the functions of the State as somewhat wider. But let us proceed to see how he unfolds his general statement.

The first duty of the sovereign is to maintain all those essential rights or sovereign attributes described before. The

sovereign, whether one man or assembly, must maintain them all intact, because otherwise the commonwealth is in danger of dissolution, and the war of all with all, "the greatest evil that can happen in this life." Secondly, it is the duty of the sovereign one or assembly, let us say, of the government, *to instruct the people in the grounds and reasons of those essential rights*; because if it lets them remain in ignorance they are easily seduced and drawn to resist it, when the State requires the use and exercise of the rights.

It is the more necessary to have the grounds and reasons of the sovereign's rights carefully taught, because the terror of the civil law forbidding rebellion, or the questioning those rights which is of the nature of rebellion, would be insufficient. Such civil law would have no force, but as it is founded on the law of nature, which forbids the violation of faith. It is on this obligation not to violate plighted promises that our allegiance and duty of obedience rests, if men throw over that, neither will they be frightened by the terror of the civil law when they think they have strength on their side, so that our obligation not to rebel turns on our good faith. (But when did the subjects promise to obey, specially when there was a divided and disputed sovereignty as a fact in 1642?)

But, says Hobbes, if these principles were acknowledged as the rights of sovereigns, and were exercised by them, "the constitution would, except it were destroyed by violence, be everlasting." These principles are only to be discovered by "industrious meditation," such are they that he has given. He thinks them principles of reason, but if not they are surely principles deducible from the authority of Scripture.

But the common people have not capacity sufficient to understand them, it may be objected. Hobbes thinks them as capable as the rich and potent subjects, or even those the most learned; because the "potent men hardly digest any doctrine that sets up a power to bridle their affections, nor the learned anything that shows their own errors, and thereby lessens their authority." These superior classes from interest will not choose to understand and believe; but the common people's minds, unless they happen to be dependent on the rich and potent, are

like "clean paper," ready to receive whatever impressions the public power may choose to print on them. They "acquiesce" in the mysteries of the Christian faith which are above reason; millions believe the same body may be in many places at the same time, which is contrary to reason. Can we suppose they could not comprehend what is so conversant to reason that any unprejudiced man "needs no more to learn it than to hear it, if it were taught by competent persons under protection of law"?

He concludes there is no difficulty in instructing the people in political science, so far as the inculcation of the essential rights of sovereignty are concerned, no difficulty but what proceeds from the sovereign's fault or that of his ministers.

It is therefore his duty to ensure the popular instruction, and not merely his duty but his benefit, and his security against the danger to his natural person that may result from rebellion (as in the case of Charles I.).

To descend to particulars, Hobbes gives us a revised version of the Ten Commandments: the people are to be taught that they ought not to be in love with any form of government in neighbouring nations more than with their own, nor what prosperity they see in nations otherwise governed are they to desire change; and the reason is that the prosperity comes, not from the form of government, but from the fact of obedience to the sovereign — whether monarchy, democracy, or aristocracy (though he thinks the former the best for those lucky enough to have it). Take away the obedience, you take away the concord. "The State shall not only not flourish, but in a short time it will be dissolved. They who through disobedience attempt merely to reform the commonwealth, shall find they do thereby destroy it" (as did the Long Parliament of Charles I., which he probably had in his mind). He here uses a remarkable illustration, afterwards employed by Burke, who appears to have well pondered this first commandment in his almost religious reverence for the constitution of his time. These reformers act "like the foolish daughters of Peleus, which, desiring to renew the youth of their decrepid father by the

counsel of Medea, did cut him in pieces and boil him together with strange herbs, but made not of him a new man."

This love, therefore, of other governments, or desire of change in one's own, is like the breach of the first commandment: "Thou shalt have no other gods before Me."

Secondly, they must not so admire the virtues of any subject, no matter how high-placed he stand or however shining his capacities, so far as to render him homage or obedience only proper to the sovereign whose representative he is; nor of any assembly except the sovereign assembly. The sovereign should be jealous of the love of his people, and averse to have it intercepted by popular individuals through flattery, as it has often been. Such open homage to distinguished and popular men is like the violation of the second commandment; the taking of any favoured representative image in preference to the more secluded but jealous Deity.

Thirdly, they must be taught that it is a fault to speak evil of the sovereign, whether one man or assembly, or to dispute about his power, or use his name irreverently, lest his name be brought into contempt, and their obedience thereby relaxed. "Which doctrine the third commandment by resemblance pointeth to."

Fourthly, a time must be set apart, the most proper being the Sabbath day (after prayer and praise to the Sovereign of sovereigns), for instruction in these their duties, to hear them told to them, as also such positive laws as concern them all read and expounded.

The king, in fact, is the image of God on earth; and as the first four commandments on the first table of the Mosaic law had inscribed on them the Jews' duty to God, with enumeration of His absolute power, not only as God, but also as King of the Jewish people by pact, so the first four commandments to be taught the people by their sovereign is by analogy suggested to them as above.

Such are our political duties, or duties to the sovereign.

Then the grounds of our civil duties are in like manner to be explained to the people, which correspond to our duties to our neighbour, as contained in the second table of the Mosaic law.

These are, first, the duties of children to their parents, namely, obedience during early years, and afterwards by external signs of honour, out of gratitude for their care and education; and this agrees with the fifth commandment.

Then the sovereign ought to cause the principles of justice to be taught. Justice consists in taking from no man what is his, which implies that we should not deprive our neighbour by violence or fraud of anything which by the sovereign authority is theirs. Property is of three things: first, of life and limb; second, of husband and wife in the marital relation; thirdly, of riches and the means of living. They are therefore to be taught the wrong of private revenges; of violation of conjugal honour, and of robbery and theft of another's goods. Also they should be shown the evil result of false judgment, either of witness or judge, by which justice is destroyed or made of no effect; and these correspond to the sixth, seventh, eighth, and ninth commandments. "Lastly, they are to be taught that not only unjust facts, but the designs and intentions to do them, though by accident hindered, are injustice. . . . And this is the intention of the tenth commandment."

He then raises a question as to the "means and conduits" by which the people may receive this political instruction, and he comes to the conclusion "that the instruction of the people dependeth wholly on the right teaching of youth in the universities." His argument is that the great mass of men, composed of those who must labour, either from necessity or desire to make wealth, or those who follow sensual pleasures from sloth or superfluity, cannot bestow the "deep meditation" which the learning of truth in the political sciences, as in all sciences, requires. These classes now get such instruction as they have from the clergy, or such of their friends as seem wiser than themselves in cases of law and conscience, through a faculty of fluent and plausible speech. Now these last, and the divines, have acquired their knowledge either at the universities or from schools of law (Inns of Court), or from books written by men eminent in the universities and schools. So that the universities are the ultimate fountains; and if the instruction is to be better hereafter, the fountain must be purer. Doctrines sub-

versive of sovereign rights, he contends, have been maintained both by preachers and lawyers educated there, which proves that, though the universities were not the authors of the false doctrines, "they knew not how to plant the true."

§ 7

Thus far as to the duties of the sovereign as teacher of his subjects' duties. But next, the safety and good of the people requires equal administration of justice to the rich and mighty, as well as to the poor and obscure. In this consists equity, to which, by the law of nature, the sovereign is subject as well as the meanest, so that he cannot pardon offences against private persons, though he may pardon offences against himself, that is, against the State.

It would, he thinks, be a great mistake, as well as wrong, to show partiality to the great, whose oppressions and injuries are so much worse than others, as they have least need to commit them, and the consequences may be terrible: "For impunity makes insolence; insolence hatred; and hatred an endeavour to pull down all oppressing and contumelious greatness though with the ruin of the commonwealth"; a sentence that all nobles and great people ought to ponder, suggested probably to Hobbes by the levelling tendency of the time in which he was writing, and which received an extraordinary and memorable exemplification more than a hundred years later in France.

And here, no doubt, we have one of the causes of the hatred of the multitude to the aristocracy manifested during the French Revolution. It was a case, not merely of the "oppressors' wrong," but of the "proud man's contumely," resulting from partiality and impunity in their being shielded from justice.

Under the head of Equal Justice before the Law comes equality in taxation, which depends on the equality of the debt that each one owes to the State for his defence. Without government, men would have to defend themselves and their property; not merely to labour, but, if necessary, to fight in defence of the results of labour, or else hire others to fight for them. Taxes imposed by the sovereign are only the "wages due to those

that hold the public sword to defend private citizens in the exercise of their private trades and callings." The benefit received, protection of life and property, being equally great for rich and poor, they would seem to owe equal taxes on that score; but then the rich who use the service of the poor should pay taxes for them as well as themselves. Equality of taxes, he thinks, consists in laying taxes on the things men consume, on expenditure rather than on property or income, so as to check luxurious waste, because men pay equally so far as they consume (on which difficult point, though good, he is somewhat brief. A tax on commodities of general consumption is no doubt somewhat equal, though by it the poor pay more of their means than the rich, and so it would be unequal).

It is the moral duty of the sovereign to provide for the support of the destitute poor, because, owing to the chances of life, many men by "accident inevitable become unable to maintain themselves by their labour," and they ought not to be left to the "uncertain charity" of private individuals, though, in the absence of public relief, the poor have a moral claim on men in general as charitable beings.

This does not apply to the able-bodied. "They are to be forced to work;[1] and to avoid the excuse of not finding employment there ought to be such laws as may encourage all manner of arts, as navigation, agriculture, fishing, and all manufacture that requires labour." Presumably they are to be set to work at these under State direction and discipline, and thus we see Hobbes is so far what would now be called a State socialist.

The objection to this course, though it would be far less strong in Hobbes' day than now, is that these industries could not be started without capital contributed by taxes levied on other citizens, and then the surplus products would be in competition with those of the same industries self-supported, to the injury of the latter, while in addition the labour would, without severe discipline, probably be inefficient. It would not be self-supporting; and more taxation would be necessary if population increased, as it would, unless the State took the regulation of the matter in hand.

[1] As in Carlyle's scheme in his *Latter Day Pamphlets*.

But even then Hobbes has a remedy short of such regulation, short of the dangerous kind of socialism, not requiring indefinite taxation. This is a compulsory State emigration.

In that case, he says, "they are to be transplanted to the colonies, into countries not sufficiently inhabited, where, nevertheless, they are not to exterminate those they find there; but constrain them to inhabit closer together, and not to range a great deal of ground, to snatch what they find; but to court each little plot with art and labour, to give them sustenance in due season"; and, finally, when the Malthusian terror of over-population comes within measurable distance, when "all the world is overcharged with inhabitants, then we return to the state of nature; the last remedy of all is war, which provideth for every man by victory or death."

In this remarkable paragraph Hobbes anticipates both Carlyle and some of our Poor Law reformers. He does not perceive the mode of escape pointed out by Malthus, but he boldly accepts his "positive check" to population in the long-run—war and death.

§ 8

It is also the duty of the sovereign to make good laws. "What is a good law?" he pertinently asks. A good law is that which is "needful" for the good of the people, and withal "perspicuous." Laws are not meant merely to restrain people from voluntary actions, but to direct them so as not to hurt themselves by impetuous desires, rashness, or indiscretion, "as hedges are set, not to stop travellers, but to keep them on their way." Laws not needful are not good, but traps for money (for the legal profession), superfluous where the sovereign powers are admitted, and where not admitted unequal to defend the people.

The law is made perspicuous chiefly by making the reason and motives why it is made perspicuous. This done, the fewer words within the body of the law itself the better, all words being subject to ambiguity, which increases with the length. The length of laws he thinks due to a "contention between the penners and the pleaders of the law," in which "the

pleaders have got the victory," the former trying to defeat the latter's possible devices to get through its meshes by making them finer by multiplication of words, which again gives the ingenuity of the lawyer new chances of escape for his client.

Punishment and reward belong to the sovereign. The end of punishment is not revenge, but correction of the offender, or others, by his example. Severest punishment is due to crimes of greatest danger to the public; such as those that proceed from malice to the government, or from contempt of justice, or that rouse indignation in the multitude, and those which, if not punished, would seem authorised, as when done by the sons, servants, or favourites of great public men. And the reason is that indignation against criminals is like to be directed against those who would be likely to protect them; as in the case of Tarquin, who was driven out of Rome for an insolent act of one of his sons. But crimes of infirmity, such as proceed from great provocation, great fear, great need, or ignorance, allow place for lenity; and lenity, when not to the hurt of the commonwealth, is a precept of the law of nature. It is the leaders and teachers that should be punished, and not the seduced people who acted through ignorance, in great part due to the sovereign's fault in not affording them the means of better instruction.

The sovereign should reward as well as punish. It is in the interest of the commonwealth that they who have well served it should be recompensed so as to encourage others to do the like, and also to study how to do it better.

It is also the business and duty of the sovereign, but only of the sovereign one, to choose good councillors; and good counsel comes neither by lot nor inheritance, so that there is no more reason for seeking it from the rich or noble on political questions, than in the science of fortification, unless we believe that there is no need of methodical study in politics as there is in geometry, but only to be onlookers, while, in fact, "the politics is the harder study of the two." True, the nobility fancy they have a hereditary right to be the king's councillors. This is a mistake, and it is inconsistent with the sovereign power. If they insist upon such privileges

as their "right, they must need by degrees let them go, and have at last no further honour than adhereth naturally to their abilities."

In a democracy or aristocracy there is no choice of councillors, because the councillors and counselled are the same. And counsel given apart in private is better than in an assembly by orations, and where "premeditated than when they speak on the sudden, both because they have more time to survey the consequences of action, and are less subject to be carried away by contradiction through envy, emulation, or other passions arising from the difference of opinion"; and in both respects monarchy has a great advantage over democracy and aristocracy.

Lastly, the generals chosen should be both good conductors (leaders) and faithful subjects, otherwise if the government be in a Parliament, and the Parliament unpopular, while the soldier is able and popular, there is danger to the government.[1] But when the government is in the hands of a monarch who is popular, there is no danger at all from the popularity of a subject. "For soldiers are never so generally unjust as to side with their captain, though they love him, against their sovereign, when they love not only his person but his cause."

§ 9

All this latter part of Hobbes' teaching as to the duties of the sovereign and the duties of subject is, for the most part, admirable (and we have hardly yet come up to Hobbes' ideal). It is only where he unduly stretches the powers and attributes of the government to the danger of freedom that he is wrong. He is wrong also, as before stated, as to the alleged origin of government and law in an original social contract; wrong in appealing to this imaginary contract instead of the actual English con-

[1] And this passage may have given a hint and encouragement to the Lord General Cromwell, who had conquered three kingdoms, and who was popular, while the Rump Parliament was very much the reverse of popular. It is thought that he began in 1651, after Worcester, to meditate the dissolving of the Parliament, which he carried out in 1653.

stitution to determine the powers and privileges of the sovereign; for though sovereignty is one, and the powers implied in it are one and deducible from the end, yet they may, as a fact, be partitioned between King and Parliament; and this was the case during most of the seventeenth century. It is something sophistical to deduce the whole group of sovereign attributes from a social contract, when the real question at issue was, How were they really divided in an existing constitution?

But setting aside this doubtful part of the work, his teaching as to the essential nature and extent of sovereignty, whether lodged (all of it he means) in one or a few, or the majority of the people, is for the most part as sound as it is acute and original. In fact, Hobbes' theory of sovereignty is essentially the parent of Bentham's, and especially of Austin's, in his *Province of Jurisprudence Determined*, only that the latter did not see that it was necessary to explain the historical origin of a thing so remarkable as government, the rule of one or a part over the rest, and also the origin of law. They both postulate the existence of government, yet surely it requires to be accounted for, instead of being assumed and merely analysed as to what it implies. The latter process gives information indeed, but not sufficient. Hobbes saw the need of accounting for the fact of government, and he gives what he considers the only origins. It now appears from the historical school that there was another origin, which did not escape the penetration of Hobbes, only that the state of history in his time did not enable him to follow this line of inquiry.[1]

The origin of sovereignty neither Austin nor Bentham inquires into. But that law is the command of the sovereign, both are agreed with Hobbes; that sovereignty itself is one and the same, whether in the hands of one, a few, or the majority. That the sovereign is not subject to civil or constitutional law is the teaching of Austin, following Hobbes.

On this part of his theory Hobbes, as said, was largely right; he was only wrong in implying that the king of England was, when he wrote, in the position of a sovereign, in the sense of being unchecked by the civil law or constitution, though

[1] See his remarkable chap. xx. of *Dominion, Paternal and Despotical.*

he erred with a great party of whose opinions he became the philosophic mouthpiece. In his account of the functions of the government, as distinct from its necessary powers, he is good and open to little objection. He certainly does not advocate a *Laissez faire* or non-interference policy, but rather that of the paternal government, the instructor and protector of the people. His account of the different kinds of government, of their merits and drawbacks, is marked by his usual acuteness, knowing, as he does, very well that there are evils incident to all of them, while of the "diseases" and "causes of dissolutions" of government, he was the first in modern times, before Montesquieu, or Rousseau, or Burke, to say anything of value. The latter is a subject of great and growing importance from the increased influence of the democratic principle in government, and the words of Hobbes, especially where he hits upon the peculiar weakness of parliamentary or popular government, are much to the point. In fact, he anticipates Carlyle's attack on parliamentary government and oratory, while more clearly than in Mill's *Representative Government* or Maine's *Popular Government* we are shown the inherent and ineradicable weakness of government by a large assembly.[1]

This part of his work is good, but his contribution to the Philosophy of Law is almost equally remarkable and original. In fact, if we take his pregnant chapters on civil laws, on crimes, their excuses and extenuations; and on punishments and rewards; together with his emphatic assertions of the need of reasons in favour of the laws being made known to the people, and that in the fewest and clearest words, we have the essence of Bentham's long labours both as regards law reform and the creation of a science of law in great measure indicated.

Equally with Bentham and Austin, but long before them, he analysed the chief notions implied in law — sovereignty, command, act, will, intention, freedom, etc.; so that he is the true founder of the Analytical Method in jurisprudence, and merits equally with them the name of analytical jurist.

I think that even a good case might further be made in

[1] See also on this point Taine's *La Revolution*, vol. i.

favour of his being the founder of sociology, so far as such a science really exists at all. For we have the recognition of the fact that a society is an organism comparable to the human organism, together with many suggestive and ingenious arguments drawn from that fruitful analogy. We have the distinction of the nutritive, distributive, and regulative systems of the body applied to States;[1] its procreation ascribed either to contract or force; its various diseases and infirmities compared to those of the human body, and its dissolution to the dissolution of the government by foreign or civil war.

To this view, indeed, Herbert Spencer objects that societies are to be compared to organisms indeed, but not specially to the human organism, nor will he grant that what corresponds to the brain is the governing agencies; the brain, he thinks, being rather diffused throughout the body as in certain simpler and lower types of life. But surely something may be urged in favour of Hobbes' view. Lower living organisms, it may be said, correspond to lower social types and groups; but might not the highest types, such as civilised societies, be fairly compared to the human organism as the highest, and the government in the State and the Church to the brain, both because the best intellect of the country is usually to be found in them—able statesmen, judges, administrators, bishops, especially where means are taken to attract by high emoluments able men? No doubt, Hobbes' analogy is not the whole but only partial truth; unless the absolutely best ability of the country was in the government, spiritual and temporal. There is usually much ability outside the government, and applied to science, literature, philosophy, invention, and even to the direction of industry. Still, from Hobbes' point of view, the government of the State is the most vital work of all, and he takes those who direct this to be the real and chief brain of the nation's life, because they do the most essential work, and because the State as a whole is moved by the government as the man by his brain.

But, apart from this point, we have also Herbert Spencer's ghost theory of the origin of religion anticipated in Hobbes;

[1] Chap. xxiv.

also the origin of polytheism sketched, the natural origin of speech as a human invention; the origin of the different sciences so far as known in his day; the fundamental dependence of all in mathematics, though he presses this point unduly; —all capital facts in the science as conceived by Comte and Spencer.

He also gives us, as already stated, a theory of jurisprudence based on natural law and on analysis; something of a theory of economics, though very imperfect; an able theory of ethics and the best theory of politics, that is to say all the more solid parts of the statical side of sociology, though from the imperfect state of history and the imperfect development of physics and chemistry he has been unable to employ the historical method, and relies chiefly on deduction and analysis. But who amongst later Englishmen has achieved greater and more fruitful results than he has done, even with his limited resources?

With his discoveries in psychology and moral science, important as they are, and with his rationalising interpretations of the Scriptures, bold as they are, we are less concerned. The whole is a work eminently calculated, as Austin says, to stimulate the mind of the reader to think; clear in thought, exact in words, sometimes vivid, and with not infrequently a felicity of illustrating his severe matter worthy of Bacon himself.

In fact, if we strike out his historical error as to the origin of governments, and again his error that they should govern doctrines, and correct his picture of man as by nature a selfish and an unsociable animal, which affects some but by no means all of his ethics, there remains a great book of a great creative intellect in a great century; on the whole, the greatest and most original, as it was the first, work in political and moral science in our literature.

§ 10

The book appeared just when the great ten years' civil war was finished by the triumph of the Parliament; and the ideas in it not improbably encouraged Cromwell to seize the helm of government, face to face as England was with

anarchy: the nation being filled with all the "diseases" pointed out in Hobbes' book; with levellers, fifth-monarchy men, and Anabaptists in the army, favoured by leading officers, with all kinds of new sects in religion, all kinds of public and private delirium in the air, as usually happens in the course of great revolutions. We know that Cromwell, after Worcester (1651), summoned leading men to sound their views as to "a settlement of the kingdom" and the future form of the government; that some declared for a monarchy under one of the exiled family; that Harrison declared for a Republic, and that Cromwell finally declared that a "settlement with something of monarchy in it would be very fit." And some time after 1652 he asked Whitelock, "what if a man were to take on him to be king?" which shows the idea was in his mind long before he dissolved the Parliament. The situation was critical in the extreme. The Rump Parliament, the only legal authority, and only half legal since the expulsion of half the original members, had gradually become unpopular. The alternatives were the continuance of this discredited Parliament, a new one, or a Convention to determine the form of government, Cromwell himself as dictator, or anarchy. But after a successful civil war it would have been risky to appeal to the suffrage lest the work of the sword might be undone by the return of loyalists, who very likely were still in a majority. It was a case, if ever there was one, for force to make good what force had done so far. It was not even a case for a new social contract, for though the majority of the English people after Worcester fight might have given their powers into Cromwell's hands owing to his marvellous career, still it was doubtful. Some settled government and peace was necessary after the terrible ten years' war. The Parliament was dissolved by force, and the public acquiesced. As Hallam says,[1] "Cromwell's assumption of the title of Protector was a necessary and wholesome usurpation, however he may have caused the necessity; it secured the nation from the mischievous lunacy of the Anabaptists, and from the more cold-blooded tyranny of that little

[1] *Constitutional History*, chap. x.; see also Carlyle's *Letters and Speeches of Cromwell.*

oligarchy which arrogated to itself the name of the Commonwealth men."

Practically, after the experiment of the Little Parliament, Cromwell was absolute, and exercised all Hobbes' attributes as sovereign, except the fatal one that had cost Charles I. so dear. He let religion alone; tolerated even the Jews and all sects that did not disturb the public tranquillity. He ruled well; even reformed the laws on the lines indicated by Hobbes; and would have gone further but for prudential reasons and the fear of professional opposition. After his death, in 1658, there was two years' partial anarchy, till at length every experiment having been tried and found impossible, the exiled line was recalled in the person of Charles II.

Now came the time for Hobbism, full and complete, for nearly thirty years, until, in fact, James II. repeated his father's folly and attempted to force the religious conscience of the Presbyterians in Scotland, and to subvert the established religion in England, when once again the subjects arose. Dissenters and Churchmen joined hands. The people, the middle class and the nobles in large part, combined, and the Parliament deprived him of his throne, which, after his flight, it declared vacant.

William III. was invited to fill the vacant throne. And from that time forward there was no further attempt at absolute government in England, though the exiled family long had their adherents. The principles of Hobbes, which had been largely identified with the principles of the exiled family, slowly lost credit, and the principles of Locke and a divided sovereignty prevailed, in name at least, though in reality nearly all the sovereign attributes passed over to the real governing power—the great Whig families. The government of England became really an oligarchy under the name of a limited monarchy.

LOCKE

I. ON CIVIL GOVERNMENT

§ 1

The greatest name in English philosophy is undoubtedly that of Locke. But in political philosophy, in point of originality he is much inferior to Hobbes, though his influence has been almost equally great. His great book, the *Essay on the Human Understanding*, deals mainly with psychology and metaphysics, incidentally with logic, the physical sciences, and the moral and political sciences. Moral (under which he includes political) speculation, he thinks might be made a science if men would "get and fix clear ideas and apply steadily to them the same name in the same determinate sense." Secondly, he thinks politics may be made a demonstrative, by which he means a deductive science, if we could get certain universal propositions from which to reason, which is essentially the view of John S. Mill as given in his book on Logic, and as exemplified in his exposition of political economy. Locke in the *Essay* presents us with two such general propositions—one that "no government allows absolute liberty," and the second, "where there is no property there is no injustice." It may be doubted if these propositions would carry us far, but they serve to show his conception of morals and politics and the proper method of developing them. In the *Essay* also he has a long dissertation on the nature of virtue and vice, good and evil, in which he traces our moral ideas largely to education, denying that we have any innate ideas or inherited moral principles. Moreover, he lays down in this connection that there are three kinds of laws by which men try their actions, with three several

sanctions (the divine law, the civil law, and the law of opinion); a distinction afterwards adopted by Bentham (who added a fourth law and sanction) and by Austin in his *Jurisprudence*, the first five chapters of which are little more than a development of the distinction.

But, as stated, the body of the work is psychological and metaphysical. The problem he sets before himself is to ascertain the origin, extent, and limits of our knowledge, together with the grounds and degrees of faith and opinion. It is in a different work, his *Two Treatises on Civil Government*, that we have his theory of the origin, nature, and limits of government, together with his refutation of the patriarchal theory of its origin, as derived by Sir Robert Filmer from the Book of Genesis. Having refuted this theory, as he supposes, and so cleared the ground of all except Hobbes' theory, he gives us his own view, the foundation of which is expressly drawn from Hooker's *Ecclesiastical Polity*, with scarce any trace of Hobbes.

Still he agrees with Hobbes in two points—first, that men originally lived in the state of nature and without any civil government; and secondly, that they emerged from this state by a social contract or compact. The men, however, the state in which they lived, and the kind of contract which terminated it, are all differently conceived by Locke. Man was not, as Hobbes asserted, an unsociable being like most of the animal species. Far from finding no pleasure but only "grief in the company of his fellows," he had within him the principle of sociability that attracted him to his fellows and that made him feel incomplete and dissatisfied when long alone. This instinct was implanted by God Himself for a great purpose that could only be realised through it; to make possible society with all the advantages which distinguish it from the low and semi-brutal state of the wandering savages. The primitive man found the society of his fellows agreeable in itself, and further advantageous in many ways. He was pre-fitted for this by the hand of God; it was not a happy accident (as our present evolutionists hold). Nor was he so very quarrelsome, on the other hand, as Hobbes supposes; for, in the first place, his sociability tends to prevent quarrels, and, secondly, the abund-

ance of land and "the plenty of natural provisions there was a long time in the world" left "little room for quarrels or contentions about property." Moreover, in the state of nature they recognised in their customs rights of property (as we see in contemporary savage tribes) in cattle and other domestic animals, land that anyone had reclaimed, and commodities, the result of an individual's own labour. The result was that until money was invented as a means of exchange there was very considerable equality of social condition. Land was of no use beyond a certain amount, an extra food supply was of little use because it was perishable; but money could be accumulated, and it commanded all other things. It was money that introduced inequality.[1] Thus, then, finally, their natural sociability prevented many quarrels, their customs and usages ruled their lives in place of laws, so that they may have lived in the condition of nature for a long time, just as the tribes of North American Indians continued to live in it (and could not really live in any other condition).

And here we have a different portrait of primitive man from that drawn by Hobbes, and a very different description of his condition; it is, in fact, a much truer picture of the man and his environment. It accords better with the results of the Historical and Comparative Method of inquiry as given to us by Sir Henry Maine, Herbert Spencer, and others. It agrees more with the accounts of travellers who have studied the habits and customs of existing savage tribes living without any government, sometimes without even chiefs. In these cases the individuals, as a rule, live without much quarrelling, though tribe and tribe may make war on each other, just as nation and nation may do. Custom rules, and very effectively, in place of laws made by a sovereign and enforced by tribunals. Private property is recognised in certain things but not in others. And the like holds of the primitive man so far as the light of the historical research has fallen upon him in his early stages.

Again, the equality asserted of man in the state of nature by

[1] Rousseau, on the contrary, says, not gold but agriculture and the plough was the great cause of inequality, because they led to property in land.

Locke is much nearer to the truth. By equality he tells us he does not mean all sorts of equality; for men are not equal in virtue or mental ability. The equality he speaks of is the "equal right that every man hath to his natural freedom without being subjected to the will or authority of any other man."[1]

Again, as to liberty or freedom, the word on all men's lips, and so liable to abuse. By liberty he means the liberty of men to dispose as they please of their goods and persons and to order their actions "within the allowance of those laws under which they are; therein not to be subject to the arbitrary will of another, but freely follow their own."

And this kind of liberty or freedom is, or should be, increased and not diminished by law, which "prescribes no further than is for the general good of those under that law." Laws "which hedge us in from bogs and precipices" should not be called or "ill deserve the name of confinement." The end of law, in short, is not to abolish or restrain but to preserve and enlarge freedom, which is almost identical with the doctrine of Kant, that law is merely the sum of those conditions (negative) which, being observed, give the largest sphere and scope to the freedom of the will.[2]

He differs here, and for the better, from Bentham, who affirms that every law restricts liberty, and is so far an evil, for though law restricts the liberty of those on whom it imposes a command to do or forbear, or imposes a duty, it widens the liberty of those round whom it throws its protection of property or person, or of those in whose favour it enforces lawful contracts; while it greatly narrows the liberty of such as would rob, or steal, or wound, or kill, or break their promises, it widens the liberty of all those who would suffer from such as these, that is, the great majority.

Primitive man, then, was not in such evil case as Hobbes represented him. And he might even have got on for an indefinite time were it not for the introduction of money, which

[1] Chap. vi. § 54.

[2] When there is no law or custom, which in early times is the substitute for it, my freedom is liable to be invaded and restricted by everyone who is stronger or more cunning, as it is by confederacies of men not individually stronger.

destroyed the primitive equality. Still his condition was far from satisfactory, while it threatened to become worse. There were three great inconveniences attending the state of nature—"Firstly, the want of an established, settled, known law, received and allowed by common consent to be the standard of right and wrong and the common measure to decide all controversies between them."[1] The law of nature which should govern men's conduct in the state of nature is plain and clear to all rational creatures, and man was always a rational creature (as even Hobbes is forced to allow). Nevertheless, men are also, by nature, "biassed by their interest as well as ignorant for want of study of it," and were very much inclined then, as we are even now, not to allow that it applied to the particular cases where it would tell against their own interest; and so it happened that the law of nature was made of "none effect," just as now men evade the moral law, which corresponds to the law of nature.

Secondly, "in the state of nature there does not exist a known and indifferent judge with authority to determine differences according to established settled laws. Everyone is at once judge and executioner of the law of nature, and passion and revenge will surely carry them too far in their own cases"; while "negligence and unconcernedness make them too remiss in other men's."

And, thirdly, even if a man is in the right he often has not the power to put the just sentence into execution, because those guilty of injustice "will seldom fail where they are able, by force, to make their injustice good"; so that often a man could not carry out a just punishment on offenders, but had to put up with injustice.

So that, finally, "notwithstanding all the privileges of the state of nature," we come round to an estimate of man's position not so remote from that boldly laid down by Hobbes as its character from the first and all along. They are in such an ill condition whilst they remain in it that they are quickly drawn into society, and the final result is that few tribes are now left outstanding, and "we seldom find any number of men live any time together in that state."

[1] Chap. ix. §§ 124, 125, 126.

These three inconveniences of a state of nature are so great that men willingly give up the privileges, the freedom, and the right of punishment enjoyed in it, for what they believe will be more than an equivalent, always remembering that man is the rational animal, alike with Hobbes and Locke. They agree to give up the power of punishing to such magistrates as they or the majority shall appoint; to submit themselves to such laws as the community, or individuals duly authorised by the community, shall agree upon. And in the former agreement we have the origin of the executive, in the latter of the legislative power, and in both the origin of government and political or civil society, from what previously was only a natural society.

But the legislative power thus voluntarily called into existence cannot make whatever laws it pleases respecting property and liberty, because it was mainly to protect property, together with life and liberty, that men agreed to form a political society. They might have got on very well, he says, in the state of nature, "but for the corruption and viciousness of degenerate men, if they had only preserved the primitive virtues of the golden age" (a sentence which doubtless furnished a text to Rousseau, who afterwards improved upon it in his *Discourse on the Origin of Inequality*), and they certainly would not quit this natural state except for an improvement in their circumstances, not likely to result if they gave up all their powers into the hands of magistrates without any limitation, thereby authorising them to do whatever they pleased with their property, lives, and liberties.

But whatever limitations may accompany it, the legislative power is the supreme power in the State; it alone can make a law. The power is unalterable in the hands in which it has been once placed. But its authority is derived solely from the covenant of the people. This doctrine Locke had derived from Hooker, the "judicious Hooker" as he calls him, from whose treatise he constantly quotes. Hooker, writing in the reign of Queen Elizabeth, strange to say, when the authority of the Crown was nearly at its highest and best, lays down in clear and express terms the future Whig doctrine of Locke, which was subsequently developed by Rousseau into the destructive

democracy and direct sovereignty of the people as manifested from 1789 to 1793.

"The lawful power of making laws to command whole political societies of men belongeth so properly unto the same entire societies, that for any prince or potentate of what kind soever upon earth to exercise the same of himself and not by express commission immediately and personally received from God or else by authority derived at first from their consent upon whose person they impose laws, it is no other than mere tyranny. Laws they are not, therefore, which public approbation hath not made so."[1]

But though the Legislature is the supreme power, it is not absolute nor can possibly have absolute and arbitrary power over the lives and fortunes of the people. This is a most vital point. Let us see Locke's proof of it. A man can give up to the public authority, constituted by him and his fellows, no more power than he had in the state of nature, and in it he had no arbitrary power over the lives, liberties, or possessions of others; no power but what customs and the law of nature gave to all, and that was limited. Nor had he even an arbitrary power over his own life, to take it away if he pleased, "but only so much power as the law of nature gave him for the preservation of himself and the rest of mankind."

The amount of power that can be exercised by the Legislature is limited to what is for the public good. The end of its exercise is the preservation of the property, lives, and liberties of the subjects. The laws made in civil society should be modelled on the law of nature that existed before society, and whose obligations do not arise in society. For the law of nature is really the Will of God. But, secondly, the legislative power must not rule by "arbitrary extemporary decrees," but by promulgated standing laws and by known and authorised judges. Because, he repeats again and again, men united at first mainly for the protection of their properties, and they must therefore have fixed, known rules respecting property.

If arbitrary, discretionary, and extemporary power is once conceded in the making of laws respecting property, etc., the

[1] *Ecclesiastical Polity*, bk. i. § 4.

people have disarmed themselves and armed the legislator to make a prey of them when he pleases; and this is a worse state than the state of nature, because to be subject to the arbitrary will and power of one man, backed by a hundred thousand soldiers (as France then was under Louis XIV.), is worse and more dangerous than to be subject to the power of a hundred thousand single men (as in the state of nature); no one being assured that the single ruler is more virtuous than other men, though he is a hundred thousand times stronger through his soldiers; and the like applies to the rule of an oligarchy or aristocracy. They likewise should govern not by arbitrary decrees but by fixed standing laws.

Thirdly, property is not secure if the Legislature may take it arbitrarily, in the shape of taxes, without the consent of the governed; for property, subject to arbitrary and unlimited taxation at the discretion of one or a few, is no property. Hence it is a mistake (the mistake of Hobbes and others) to suppose that the legislative power can dispose of the subject's property arbitrarily or take any part of it at pleasure by way of taxation.

There is not much danger of this, he thinks, where assemblies (like the then House of Commons) are composed of variable members which melt after a time into the mass of the people; but only when the legislative power lies in an indissoluble and consequently irresponsible assembly, or in the hands of a despot. Good laws of property are only a protection against fellow-subjects of evil inclinations, against bad fellow-sheep, but not against the shepherd, who may chance to turn wolf and devour their substance (and perhaps the sheep themselves). Therefore all taxes must be by the consent of the people, that is, of the majority of them; and this consent must be given either by themselves or else by their chosen representatives, otherwise the fundamental law of property is violated, and the end for which government was created is subverted.

Fourthly, the Legislature cannot transfer its power of making laws to other hands, because the power is only delegated, not inherent power. The people alone, who conferred it, can

transfer it. Therefore if the people have placed it in the hands of One he cannot transfer it to a few; if to a representative assembly, this assembly cannot part with it to the prince; if they have divided it between king, peers, and commons (in whatever proportions), so it must remain; unless the people, the original source and depositaries of political power, should wish for a change, and signify the same by the agreement of the majority.[1]

§ 2

These are most important words of Locke, and pregnant with momentous consequences which have flowed, and may yet flow, from them. Taking the last proposition first, it lays down that the people is the legitimate source of the legislative power, by the people meaning the majority. They could alter the incidence of the power, confer more on one estate in Parliament than the other, could revive the partial despotism of the Tudors, as under Henry VIII.; of an oligarchy, as during the eighteenth century; or maintain it all in the last resort in the House of Commons, as they do at present.

Can they retain it in their own hands and exercise the legislative power directly themselves or by their representatives, considered as their clerks or agents? They must part with it to representatives, owing to the difficulties or impossibilities in the way of the direct exercise of it in a populous country. But they can sufficiently impress their wishes on their representatives without its being necessary to treat them as mere delegates.

The three previous positions, as to the limits of the legislative power in making laws, in levying taxes, and the necessity of the taxes being consented to by the people's representatives, are even more important. For they state true doctrine in the main, the opposite of Hobbes and of the school of Bentham and Austin, who found their theory of sovereignty on Hobbes. It follows on Locke's principles that an absolute monarchy (and an absolute oligarchy) is not only a bad government but is not a legitimate government at all. As between monarch

[1] Chap. x. § 132.

and subject there still exists the state of nature, because the monarch is under no legal obligation to his subjects, whilst they are all under legal obligations to him. And in such a case, where there is no common judge to appeal to, the state of nature so far exists, should any difference arise between king and people. Suppose, for example, they are oppressed and plundered by the sovereign one, or their conscience in matter of religion coerced, they are apt to regard themselves as in the state of nature with respect to him, and if he pushes his tyranny far, to resist by force. Existence under an arbitrary despot is really worse than in the state of nature, where one might hope to defend his life, liberty, and possessions more successfully. Nor can even the legislative body, though supreme, be omnipotent and absolute; its sovereign power must be limited by fundamental and known laws, and must legislate within their limits.

He would not admit the sovereign omnipotence of Parliament, though he would probably admit, were he living now, that the legislative power had passed to the House of Commons, the will of whose members, or of their majority, finally prevails, if the will of the electorate shows itself sufficiently unchanging. He would say that Parliament—the House of Commons—must respect property, must not impose arbitrary taxation, without the consent of the taxpayers.[1] It can tax property for the necessary expenses of the State, but cannot arbitrarily extend these for the purpose of placing taxes on the rich to be distributed amongst the poorer classes. At least it cannot do so on Locke's principles, without a subversion of the original ends for which civil government was created and for which it still mainly subsists.

And it is all the more necessary to remember this now that the people have so great political power, when in fact the people by the constitutional changes made since Locke's time is the "political" sovereign, and can so largely compel its representatives to carry out its will. It is necessary to emphasise what Locke lays down that laws cannot be arbitrary whether the sovereign be one or the majority of voters, nor

[1] Chap. xi. § 140.

can the Legislature deprive a man of his property by arbitrary taxation even with the consent of the majority, which might be readily enough given by a majority composed mainly of labourers for the taxation of the rich. Whatever taxes are imposed should press, as nearly as possible, equally on all, though, of course, such equality of burden might require from the rich a larger proportion of their means, but not an arbitrarily assessed proportion to be subject to arbitrary increase.

Locke, one of the greatest and fairest of Englishmen, is against this, as is his philosophical successor, J. S. Mill, who contends for equality of taxation. And the further reason is that arbitrary taxation would be unjust, and finally, if long pursued, would be disastrous to all, and especially the working classes, for whose benefit it is by supposition meant. Justice, the general weal, and most of all the weal of the working classes, forbid it.

§ 3

Much of Locke's political doctrine is sound, much of it has borne fruit. There is, however, a formidable objection to it, the same as to Hobbes' views. There was no primitive social contract. But to this Locke boldly replies by offering examples from history. That men once universally lived in a state of nature he thinks a fair and likely hypothesis, from the fact that tribes of men in North America and elsewhere were actually living in the state of nature. It is also reasonable to assume considerable equality amongst aboriginal men, because such equality actually existed amongst men in the state of nature when he was writing. And once grant such equal human units to have existed, the hypothesis of a social contract such as Locke describes is the simplest and most natural way from the state of nature to a civil society, supposing them to have found the former very inconvenient, as Locke shows clearly it must have been, and that they wished to escape from the inconveniences. As Hooker, the first in modern times to lay down the doctrine of a social contract, says, there was "NO WAY but by agreement amongst themselves, and except they gave their

common consent all to be ordered by some whom they should agree upon, without which consent there would be no reason that one man should take upon him to be lord or judge over another," because all are by supposition equal.

This is sound reasoning if we grant the hypothetical assumptions of isolated and equal units desirous of forming a society and laws and government. All else would follow as Locke has laid down. But in fact, and in spite of Locke's laboured examples, there is not a single authenticated case in history, before his time, of such a contract having been made, or of a government having been created by the people meeting and agreeing one with another to hand over their powers to one man or one assembly. Something like it, indeed, occurred *after* Locke's time, when the French people in Paris (with imitations over France) met in the Champ de Mars, 1791, and swore fidelity to the new constitution (or social contract), while the king and the assembly in like manner did the same. Here was something like a social contract, something like an agreement of all to hand over their inherent powers to the government as defined in the constitution, together with mutual promises of governors and governed, the former to govern according to the constitution, the latter to obey the laws; while in the constitution were laid down Locke's fundamental laws guaranteeing property, and providing for changes by an appeal to the people. Here was a social contract, but it was a new and modern thing, which probably would never have existed but for Locke's book, which had been carefully read by Rousseau, and whose chief conclusions were reproduced and pushed to their extreme logical limit in his famous *Contrat Social* (1762), which supplied the groundwork of the constitution of 1791.

Other democratic constitutions have been framed in modern times, particularly in the new-formed American States, on something like the lines of the *Contrat Social*, but all after Locke's time, and they may be mostly traced to his suggestions. These, however, are not to the purpose; Locke's theory is that *all* lawful governments began in this way, the only other origin being force.

But though there is no proof that governments began in this way, most of them having had their origin in conquest, it is true that unless they finally rest on the unforced and willing consent or agreement of the people or the majority, they are not free governments. If the power that can make laws has their consent and approval it is free, whether the power be in the hands of one or an assembly regularly elected; otherwise it is despotic. On the other hand, a democracy itself, government by a majority, may be a tyrannical government if there are no limits placed on the exercise of its will; if it does not deliberately lay down bounds in advance to its own possible arbitrary will by constitutional law or a social contract, guaranteeing fundamental laws and rights, such as the rights of property and conscience.

As to the actual origin of government and sovereignty, it is an interesting question of speculative politics; but it is only during the last fifty years that our knowledge of early times has sufficiently increased to enable us to give something like an answer to it. And, in the first place, history does not show us in primitive times men living in a state of individual isolation, such as might afterwards meet and form a social contract. We are shown groups of men for the most part groups of kindred, and in these groups usually there is a patriarchal chief, who wields authority over the individuals, who directs and controls them and manages the property of the group: like the patriarchs of the Old Testament, Abraham, or Lot, the present chief of an Arab tribe, or a Highland chief of two hundred years ago. This chief may in time, with further expansion of the group or clan and possibly by war with a neighbouring chief, become something like a small king. One clan may conquer another, and so kingship may arise, whose authority may descend by primogeniture or more likely by election of the "worthiest" of the chief's near kinsmen. There is no social contract here, of course, yet the government rests on consent and often devoted love and fidelity. In this early state, while the chief has great power over the lives of all and is the administrator of the common property, he may issue irresponsible single commands, but these are not properly laws,

though they may be the germs of later laws, or decrees of a despotic monarch or sovereign Legislature. What correspond to laws are customs. In the chief we have what appears to be the first origin of government by one. In early times, too, we find in Greece assemblies ruling in the cities. Both kinds of governments have a long subsequent history. In each modern nation the history of government has been a different one, though all the German tribes began with barbarians tolerably equal, who gradually elected the bravest for their chiefs.

This is the new way of treating the question of the origin and development of governments and of law, the historical method, which is now preferred to the hypothetical and abstract method of Hobbes, Locke, and Rousseau, which starts from the state of nature and reasons from the law of nature as ruling the lives of the units.[1]

But if we admit the possible beginnings of civil government (and of laws) in the way of a social contract, though history has searched in vain for cases corresponding to the theory, it must be allowed that Locke's statement of the original contract is more plausible, at least agrees better with the motives of existing human nature than that of Hobbes. There is more of truth in it, that is, it more consists with known historical facts and with existing traits of human nature, if we may further assume that in certain fundamental parts human nature was the same in the aboriginal man as it is to-day in us. If we can suppose anything like a contract made by rude barbarians or savages so long ago, there would not be an unconditional surrender of all their powers, as well as control over their property, to one man, as Hobbes prefers to think of the transaction. They only agreed to form a political union to secure their property, lives, and freedom, at hazard in the state of nature, which had become not quite a happy state to live in, whatever it may have been in the previous equally hypothetical state of a golden age, a fiction in which Locke appears to have believed.

But the question arises whether the generality, as conceived

[1] A fuller account of the historical method will be found later in connection with Maine's Political Philosophy.

by Locke, would be willing to make the social contract guaranteeing to each his property which was at hazard in the state of nature. We must suppose they would, because property was already recognised both in land and goods as being in accordance with reason and natural law, and because the majority had property, and inequality before the use of money was devised was much less than it became later. It is true, the majority would not suffer so much in the state of nature and without law as the richer sort, who invited attack both from other rich but unscrupulous persons, as well as from the brigands, robbers, and lack-alls, who of necessity lived at the expense of the rich as the only possessors of superfluities. Still the majority could also be robbed and enslaved, and their lives were in danger, and therefore we must suppose that the social contract establishing a government and law would be acceptable to them, since it promised to protect the three things they chiefly cared about—their property, life, and liberty.

§ 4

It is at this point of the story that Rousseau takes it up and tries to improve it. He had carefully read Locke as well as Hobbes, but all his sympathies were with the views of Locke. Born in the Republic of Geneva, he had democratic leanings from his civil surroundings, together with a certain untamableness and desire for freedom and individuality derived from nature. He was thus well qualified for carrying Locke's theory to its extreme point.

Rousseau, though on slender historical grounds, had come to the conclusion that there had been a long period before civil governments existed; there were even countries in which they did not yet exist; consequently, contrary to Locke's teaching, men did not speedily find the state of nature intolerable. Rousseau in fact had divined what historical investigation has since proved, that there were successive stages in the pre-civil state or state of nature, which he divides into the solitary hunter stage, and, omitting the pastoral, the later agricultural stage. The agricultural stage necessarily led

to private property in land, and this, and not the invention of money, led to inequality, and great inequality to great disorders; since those without property necessarily, singly or in bands, made war on the rich as the possessors of superfluous goods.

The latter defended themselves, made slaves of the conquered, and employed them to make more. They became themselves half brigands. The right of the strong became the rule, and set aside the right of the first occupant. The voice of justice and natural law grew faint, and mankind came to a frightful pass, something very near to Hobbes' war of all with all. Still in this general war the rich came off worst on the whole, because they bore the general expense, while their lives as well as their possessions were in danger. Nor could they put in a good plea for their riches, in part the result of force, part of first occupancy. For Rousseau does not agree with Locke that first occupancy and the labour of clearing and cultivating land gives an unimpeachable title to it and its fruits. The situation was only acceptable to the robber and brigand class, and the idle, improvident, and turbulent spirits from which they were recruited, who levied tribute on the rich and in less degree on the poor. The way out of this ill condition was the primitive social contract, which he considers a very astute piece of policy on the part of the rich to induce the honester sort of poor, who would be in the majority, to side with them, and hold the disorderly and dishonest in check. "Let us," in effect said some astute spokesman of the rich, "unite to guarantee the feeble from oppression, to check the ambitious, and to assure to each one the possession of what he has. Let us institute laws of justice and of peace to which all will be compelled to conform, which will make no distinction of persons. . . . In one word, in place of turning our forces against each other, let us unite them into one supreme power over all, which will govern us by wise laws, protect and defend all the members of the association, repulse the common enemy, and maintain us in an eternal concord."[1]

The multitude, easily deceived by plausible speech, then as now, applauded this proposal. The social contract or treaty

[1] *Discours sur l'Inégalité.*

between rich and poor was duly signed, guaranteeing amongst its main articles private property. It was an extremely bad bargain, according to Rousseau, for the poor, for the generality. For civil society, with its necessary concomitant of laws and coercive restraint, only serves to maintain the rich in his superfluities and the poor in his miseries. The contract never should have been signed. The original state of nature was better; and after its signature things went from bad to worse, till finally, as the sole cure for the evils that resulted, there came despotic governments everywhere, in which all men lost their liberty, as they had already lost their original equality. Hence he says, opening his next book on the Social Contract, "Man is born free, yet is everywhere in chains."

They had signed a fatal contract, which only guaranteed for them poverty, misery, and servitude. It is a question now to have a revised contract, and Rousseau will draw up for them the contract they ought to have signed, and one that will protect the interests of the poor.

Here it is: "Each of us puts in common his goods, his person, his life, and all his powers, under the supreme direction of the general will, and we collectively receive each member as an indivisible part of the whole."[1] This act of association produces a body, moral and collective, called republic or body politic, which is the State when regarded as passive, the Sovereign when active. This is the act of association that the different individual contractors should have subscribed, and truly enough it will guarantee the extremest claims of the generality; for it places the property, the lives, even the liberties of all at the mercy of the general will, that is, of the majority. And the only protection for the rich would be the perception on the part of the generality that it would be against their own interest to confiscate and divide property amongst them.

As the social contract, as conceived by Hobbes, favours a monarchy, as by Locke, a limited monarchy or parliament, so Rousseau's conception is framed with a view to a democracy of

[1] *Contrat Social*, chap. i. 6.

the extremest type, in which the law-making power and the sovereignty is in the hands of all. A strange inversion of parts, one would say, in which the body and not the brain directs! in which the impoverished many are trusted to spare property, in which those who have no constant will, no clearness of intelligence, no knowledge, and, by the nature of the case, till we are all on a perfect level, can have but little, are to draw up just laws requiring wisdom and virtue.

But the people are virtuous; ignorance is compatible with virtue and innocence. Granted; they are as virtuous as the classes above them, no more. They have not the wisdom or knowledge requisite. But can they not get the wiser to act for them, to represent them, and give them the benefit of their superior knowledge? No, says Rousseau. The legislative power must remain in the hands of the people. They cannot be represented; if they give the power over to representatives, these will become the real sovereign—the agents will become principals. It is an unrepresentable power. They must exercise it themselves. And thus it follows, as Bentham urges, that no country can have proper laws, save one small enough, like San Marino, for all the people to meet and agree to them.

The executive power indeed may, and must necessarily, be parted with, but not the legislative, because the legislative is the real sovereign power, and the people ought to be the sovereign. In the case of the executive, its members are the agents of the people, their officials and clerks; so are the judges, the generals, the civil administrators. How to keep control over them in their appointment and dismissal is a difficulty which requires to be dealt with, and Rousseau deals with it in a special chapter.

All this theory was attempted to be reduced to practice, first by the sovereign people themselves, who became their own judges, soldiers, executioners, though they could not make laws; then by means of chosen representatives (for they had to depart thus far from the anarchic theory) in the constituent assembly, then in the legislative assembly, finally in the con-

vention and the government of the Directory; and the world knows the terrible results of the attempt to make and carry out the first two constitutions, framed according to the governing ideas of the *Contrat Social*. For it was the attempt to do this that led to all the terrible excesses of the Revolution after 1791. The dogma itself, before any constitution was made, had startling effects. The sovereign people stormed the Bastille, and the world applauded; took the king and queen prisoners, and killed their attendants; again invaded his palace to coerce him, after the first constitution was made acknowledging their sovereignty; stormed the palace; put the king in prison; itself, in exercise of its sovereign rights, acted as judge and executioner in September 1792 on the suspected prisoners; violated the sanctity of the Convention (urged on by artful leaders), and demanded the exclusion of the moderate or Gironde party. Then the purged Convention was allowed to have its own way, when it in turn became despotic, usurped the sovereign power, and put a muzzle on the sovereign people for a time. In 1795 it again rose twice, and the second time Bonaparte was called in to put it down by artillery; after which the sovereign people appeared no more on the public stage till the "three days of July" (1830).

But strange to say, in spite of the first grand failure, the terrible results of its brief triumph, the doctrine of Rousseau and of the sovereignty of the people has largely conquered in the foremost nations; in England, France, and the United States, in the English colonies, and partly in those countries where the king or monarch has granted constitutions. Moreover, a great thinker like Kant, writing in 1796, sees a truth in the doctrine which he tries to detach, in his *Philosophy of Right*. He even declares that government by the collective or general will is the doctrine of the future. But representatives are indispensable, contrary to the teaching of Rousseau.

The germs of the whole doctrine are in Locke; Rousseau merely developed them. The people whose will originally created the government can change it. And why not keep it in their own hands as the safest depositaries, said Rousseau.

We have now discovered the necessary correction of this view, that the people must have representatives while they still retain the sovereignty so far that, when they are agreed, they can compel their representatives to carry out their will. The problem now is, while carrying out the will of the people, to control the will, and to control it with its own consent.

There is one fundamental difference between Locke and Rousseau. The contract was made mainly to protect property, according to the former. Rousseau re-states it, and apparently places property at the discretion of the sovereign. Locke is surely right here and Rousseau wrong. Indeed he afterwards retracted the doctrine, where he says: "The rights of property are the most sacred of all the rights of citizens, more so in some respects than liberty itself." His statement of the new social contract is therefore so far wrong. We do not place our property at the disposal of the general will, that is, of the majority. And Kant is agreed with Locke that the protection of property is the fundamental duty of the State, as he is with the later and retracting Rousseau. There are indeed two irrefragable reasons for private property; the first is, that it is best for the poor as well as all other classes. They will all have more property finally, by recognising it, than they could hope to have under either anarchy or communism. The second is, that it is an absolutely necessary result of human nature, that has not changed for thousands of years on this point. If this be once granted, and it is impossible to refute either view, the case for property is made out, and all that can be left to the direction of the general will are slow changes in the accidents but not in the essence of the principle; the revision of the laws relating to property and contracts, as indicated by equitable considerations. While in certain cases, such as copyright and patents, there may be even new rights of property created to the general benefit; that is, a recognition on grounds of justice and utility of a property where there was none before. So little have our communist and collectivist friends, who would push back the clock of history, restore the state of nature, and apply

Rousseau's confiscatory social contract, afterwards repudiated [1] by him, all the argument on their side.

§ 5

We may now, having examined the three forms of the theory, make a final pronouncement on this famous doctrine of a social contract. There was no social contract by which men passed from a state of nature into civil society. But there was a state of nature, and there are still tribes living in it. Even if there had been a social contract made ages ago by barbarous ancestors, it would not bind later generations as Hobbes thought. Locke, though he makes the fundamental mistake as to the contract having been made, is still much nearer the truth than Hobbes, when he thinks that if one of the parties, the sovereign, violates his part, the subjects are not bound to obedience; also when he thinks that the actual contract is to be identified with the actual constitution of the government of a given people like the English. So that the actual social contract is the constitution, together with the fundamental civil laws protecting property and enforcing free contracts. The social contract existing in the United States is the constitution of the United States, together with those of its several individual States, so far as in each they supplement it. The contract with us has varied from generation to generation according to the strength and influence of king, aristocracy, people; it has always been and still is subject to revision, but less and less the more time goes on; and, the people having got their due share of power, it is not subject to further change unless they foolishly abuse their strength and violate the understood terms of the contract by attempting to invade the private rights of property or the public rights to liberty.

It is history alone which teaches us the origin, growth, and

[1] When Rousseau was in England, Hume complimented him on the style, eloquence, and ornament of his works. "To tell the truth," said Rousseau, "I am not displeased with myself in that particular." But he added, "Je crains toujours que je pèche par le fond et que tous mes systèmes ne sont que des extravagances," which Hume thinks much too severe a judgment (Burton's *Life of Hume*, vol. ii.).

causes of decay of governments, as well as of societies without governments; of kingship and aristocracies; of institutions and constitutions. It is history alone that can show us the natural and necessary origin as well as the successive changes of property, though we can also show by psychology and the principles of human nature that, after a certain stage, property is a necessary consequence as well as a beneficent result, as we can show from our sense of natural justice, a part of our moral sentiments, that it is just. We can trace the origin and history of contracts in like manner, but we can also show their great utility and absolute necessity as well as the injustice of non-performance of contracts.

And we are thus prepared, taking leave of the doctrine of a social contract, and the philosophies of law and government founded thereon, to take up the views of those political philosophers who, like Bentham and Mill, would either explain all laws and institutions by considerations of their utility, or like Burke, a practical politician as well as a philosopher, but a strong partisan and not a pure scientific speculator, would defend by all means existing institutions, including their evils and corruptions, sometimes on the ground of fact, possession of the field, especially long possession,—in a word, of prescription; sometimes, again, on grounds of natural justice; sometimes on the ground of utility, and occasionally even as it serves his turn on the doctrine of a primitive social contract.

Finally, we have Sir Henry Maine, who rejects the social contract and the abstract method of reasoning, rejects the doctrine of natural law and natural rights, gives only a partial assent to Bentham's doctrine of utility, and treats the question of the origin and development of government and law as well as political institutions and constitutions by the Historical Method.

II. ON TOLERATION

§ 1

But before considering the views of other philosophers there is still an important work of Locke's which concerns our subject; and that is his *Letters on Toleration* (1690), in which he pleads for more than "declarations of indulgence or acts of comprehension,"—for complete liberty of conscience and of worship, full toleration for all sects and churches except only atheists, those who teach what is contrary to the fundamental principles of society, and those who will not tolerate others.

He draws his argument from his conception of the different ends of civil government and religion; the end of the first being the protection of property, life, and liberty, the end of the second the future salvation of the individual's soul.

The care of the spiritual interests of the citizens is not committed by God to rulers, for there is nothing in Scripture to that effect. "Nor can any such power be vested in the magistrate by the consent of the people; because no man can so far abandon the care of his own salvation as blindly to leave it to the choice of any other, whether prince or subject, to prescribe to him what faith or worship he shall embrace. For no man can, if he would, conform his faith to the dictates of another. All the life and power of true religion consists in the inward and full persuasion of the mind; and faith is not faith without believing." Whatever profession we make, to whatever outward worship we conform, if we are not fully satisfied in our own mind that the one is true and the other well-pleasing to God, such profession and such practice, far from being of any furtherance, are indeed great obstacles to our salvation, because thereby we add hypocrisy and contempt of God to our other sins.

All this seems sound doctrine except the proposition that no one can receive his religion at the dictates of another, for a great many people do surrender their own judgment on matters of religion to what they take to be the better knowledge of others.

They bow to their superiors in knowledge and capacity, to spiritual leaders and guides, and there must always be such, just as there must be leaders in matters temporal. People imbibe their religion slowly in early years from parents, pastors, teachers, that is, from the authoritative instruction of others; and should they attempt in maturer years to revise the religion thus instilled, the great majority would defer to the authority of controversial or apologetic books in repute or else to eminent living spiritual teachers, though some private judgment would be needed to decide what books contain the most convincing arguments, or what person is capable of giving the truest instruction. Not the less, however, do the great majority take their faith on trust from their superiors, and, with a few exceptions, rightly, as only the leaders in thought and learning, who are few, are fit for full, free, and independent inquiry. And certainly neither Prince nor Parliament is fitted for this difficult work of instructing their subjects in religion, however they may have in the service of the national religion those who are competent.

The second argument of Locke is that the care of souls cannot belong to the civil magistrate, because the magistrate disposes only of force, and physical force cannot act on the intellect. "Such is the nature of the understanding that it cannot be compelled to the belief of anything by outward force. Confiscation of estate, imprisonment, torments, nothing of that nature can have any such efficacy as to make men change the inward judgment that they have framed of things." This is true; still persecution or civil disabilities might induce many ordinary people to listen to the best reasons on the side of the magistrate as well as on the other side, and with the result that some of them would be convinced; and that almost unknown to themselves the fear of penalties, as well as the favour of the ruling party, might act on their convictions. A "gift blindeth the eyes,"

according to the proverb, and both fear and favour may bias the intellectual judgment. Besides, although the father may be converted only in name his son may be a sincere believer. Henry IV. of France was probably only a nominal Catholic, but his son and all his other successors were real Catholics.

Locke allows that penalties may produce a profession of belief, but thinks such lip profession and outward conformity in worship displeasing to God, if unaccompanied with full persuasion, which appears to leave out the numerous cases of belief short of certainty; cases of real but only partial scepticism as to all forms of religion, cases where the arguments and authorities on the side of two different religions appear to be so nearly balanced that there is little to choose between them, cases where the man believes that either religious road will do to travel on.

His third argument is better, but not perfect. He thinks that even if laws with severe penalties did produce religious conviction and change a man's religious opinions, still, considering the great variety of religions in the world, and that princes themselves are of different religions, it would be a very risky thing for men to quit their reason and blindly follow their prince's religion. This part of the argument seems sound. But he goes on to say that "there being only one truth, one way to heaven, . . . one country alone would be in the right, and all the rest of the world put under an obligation of following their princes in the ways that lead to destruction; and, that which heightens the absurdity and very ill suits with the notion of a Deity, men would owe their happiness or misery to the places of their birth." Now, if there be but one way, the majority of men do owe their future happiness or misery to the country of their birth, since most men accept the religion of their country and their prince without any exercise of their reason on the matter.

Let us enter into this important question a little deeper. I have a sacred right to form my own conception of the universe and of its Cause at first hand, if I have the ability and learning necessary; if not, then I have a right to decide from which of several competing authorities to take a conception or receive assistance in forming one. The State, the magistrate, at least in

modern times and in civilised communities, has no right to dictate to or force the subjects on this matter. It usually exceeds the ability of the magistrate to teach me, as it exceeds his right to attempt it. True, he may appoint learned theologians to do it for him, but it would not follow that all the learning and capacity would be on his side or at his service. It may have been so during the Dark and Middle Ages, when the Church had within her fold all the best intellect and all the learning of the time, and was permitted by the temporal power to govern religious doctrine. This state of things slowly ceased with the rise of secular science, the Renaissance, and the spread of the Reformation. It had ceased to be so when Locke was urging his vigorous plea in favour of toleration. It has entirely ceased at the present time.

But still more: the highest minds have not only the right to think freely on these great questions of religion, but it is the special work, the duty of some of them, to endeavour to correct imperfect religious doctrines, to revise them under the light of later scientific knowledge and philosophy, to test them so as to make them approximate nearer to truth. This, however, only applies to the select few, the elect of men; and the question whether this necessary work is to be done subject to the supervision or censorship of the Church as in Roman Catholic countries formerly, or under that of the State as Hobbes wished, is now settled in most civilised countries in favour of liberty of speculation, of speech, and publication. This refers to the higher minds, but any person may join himself to any of the numerous religious sects he pleases, or he may make no profession of any faith.

It is not, as Locke supposes, because, when the imaginary social contract was made, religion was reserved as the citizens' private concern, and not one of the ends for the furtherance of which the State was called into being; but because it is one of the duties of the individual as a man (especially of the higher minds) that he should exercise his reason on the subject so far as he is competent, and because it is his right to think freely on the subject, so far as he cares to do so. Where the man knows he is not able to reason rightly on the matter, then

he has a right to choose the best guidance on the grounds of his own reason. Every man is not required to test the religion he has been brought up in, as Locke sometimes seems to think, sometimes not. If a man has honest doubts about it he will (unless he thinks himself wiser than everybody else) try to get the best arguments for and against it either from books, or he will seek living authorities to assist him to come to a right conclusion. But neither a sovereign, a monarch, nor Parliament, still less a majority of citizens, has any competence to prescribe to him what he must believe, to do which is indeed impossible; nor, for Locke's reasons, any right to force him by penalty to outward conformity; and we may be sure that if a new social compact were now drawn up between sovereign and subjects, the majority would agree that religion should not be an affair for the State, but for each man's own reason and conscience, assisted by whatever better light he can find. Toleration, religious freedom, should be allowed on the grounds as well of rational right as of general utility.

§ 2

According to Locke, no man is born a member of any church. He is not of necessity of the same religion as his parents. He joins himself voluntarily to that society or church "in which he believes he has found that profession and worship which is truly acceptable to God." He defines a church to be "a voluntary society of men, joining themselves together of their own accord, in order to the public worshipping of God, in such a manner as they judge acceptable to Him, and effectual to the salvation of their souls."

A man voluntarily joins a particular church in order to be furthered in his eternal and spiritual interests. The great final end, his own salvation, determines all his conduct in the matter. As he joins it because he thinks it to contain most truth and the most acceptable forms of worship, according to his reason, so he may voluntarily leave it for one he deems a better one. Such a church, like every society, may and must make laws for its members or it will dissolve; but such laws

extend only to its own members. There need not be any bishop or presbyter, nor even apostolical succession to constitute a church. The words of Christ are decisive: "Where two or three are gathered together in My name, there am I in the midst of them." There need be nothing in the doctrine or ritual of any church but what is laid down in Scripture, nothing that Scripture or Christ Himself has not declared necessary to salvation. Laws and discipline ought to relate strictly to the end, eternal salvation. There should be no force behind the ecclesiastical law. Exhortation, admonition, are allowed to enforce duty on members, failing which, there is "excommunication." The "stubborn person should be cast out and separated from the society."

He then raises the question, How far toleration extends? and he replies, first, that no church is bound by toleration to retain a member who will not conform to the laws of that church. Such a one may be excommunicated, but without injury to his person or property, and without force, for force belongs only to the civil powers.

Secondly, no private person has any right in any manner to prejudice another person in his civil enjoyments because he is of another church or religion.

The same holds of particular churches as of particular individuals. None of them have any power or jurisdiction over another, even though the ruler of the State belongs to one of them. The civil government of the State can give no new right to the church, as before defined, nor the church to the civil government.

Thirdly, as to ecclesiastics, whatever be the source of their authority, it should be strictly confined, and not extended to civil matters, because the Church is absolutely separate from the State, and both are, "in their original end, business, and in everything, perfectly distinct and infinitely different from each other." It follows, therefore, that no man, whether Pope or Archbishop of Canterbury, can deprive another outside his church either of liberty or worldly goods on account of supposed errors in religion.

Not only should ecclesiastics abstain from persecution, but

they should exhort others, whether private persons or the magistrate himself, to "charity, meekness, and toleration" to all other sects. They of the National Church especially should do their best to allay heats and animosities against Dissenters. The opposite spirit has led to strife, persecution, and war, and is scarce compatible even with friendship. Lastly, as regards the duty of the ruler in the matter of toleration. He must not use force to compel belief. He may admonish and teach, as may other men. The care of each one's soul is intrusted solely to himself. He may indeed be careless about it, just as he may be about his health or property. It is true, there is only one road to heaven, but that road he thinks wide enough to allow all to travel on it who "are agreed on the substantial and fundamental part of religion." Even allowing the path to be narrower, the prince is not more likely to know the true way than another, being born with greater power, but commonly not with great powers for ascertaining the true religion, as appears indeed from the fact that they have embraced so many different religions. He may, indeed, refer me to the church for arguments, which of course will be his own church, but how am I to know that it is the true church? The decisive consideration still remains that though the magistrate's opinion may be the true one, unless I am convinced it is true it will be unsafe to follow it.

"I may grow rich by an art I take not delight in; I may be cured of some disease by remedies that I have not faith in; but I cannot be saved by a religion I distrust, and by a worship that I abhor."

"In a word, whatever may be doubtful in religion, yet this at least is certain that no religion which I believe not to be true can be either true or profitable unto me. In vain therefore do princes compel their subjects to come into their church communion, under pretence of saving their souls. If they believe, they will come of their own accord; if they believe not, their coming will nothing avail them. How great so ever, in fine, may be the pretence of goodwill and charity, and concern for the salvation of men's souls, men cannot be forced to be saved whether they will or no; and

therefore when all is done they must be left to their own consciences."

The magistrate may not impose by law any rule or ceremony. What is contrary to law or morality he may forbid in churches. He cannot deny toleration on the ground that the worship is idolatrous as a doctrine, which would lead to universal persecution. Even pagans should be tolerated. Under the Mosaic law, indeed, idolators were to be rooted out, but Christians do not live under the Mosaic dispensation. So far as to outward worship. As to speculative opinions, as already shown, none can be imposed on any church by the law of the land, or by the prince, nor ought he to forbid any speculative opinion, because none such can have any relation to the civil rights of his subjects. The doctrine of the Real Presence does no injury to non-believers in it; nor does the Jews' non-belief in the New Testament, nor the pagans' doubt of both the Old and the New Testament, do any harm to the Christian believers.

But so far as religion consists in right moral actions, it concerns the civil government, which aims at controlling men's actions in general in a moral direction. Here there is danger of a collision between the two spheres,—that of the government and of the overseers of souls: of the law and the private conscience. Here, however, a due regard to the limits of each may prevent collision.

Toleration should be the rule. But there are exceptions. "First: no opinions contrary to human society, or to those moral rules which are necessary to the preservation of such society, are to be tolerated by the magistrate." But few religious bodies, he thinks, have ever professed such; though the Anabaptists of Germany came very near falling within this exception.

A second and more dangerous class ought not to be tolerated, those, namely, who arrogate to themselves some peculiar prerogative covered over with a specious show of deceitful words, but who are really opposed to the civil rights of the rest of the community. Such are they who assert that "Dominion is founded on grace," *i.e.* that it should appertain to themselves as the chosen vessels of grace. Thirdly, those who will not teach

and practise toleration in matters of religion; those churches, again, who deliver themselves up to the protection and service of another prince, "such would be a Mohammedan church in England if its members professed their obedience to the mufti of Constantinople, who is entirely obedient to the Ottoman emperor."

"Lastly, those are not at all to be tolerated who deny the being of God. Promises, covenants, and oaths, which are the bonds of human society, can have no hold upon an atheist. The taking away of God, though but even in thought, dissolves all."

§ 3

Such is Locke's doctrine of toleration, as given in his first and on the whole admirable letter. There follows a second, longer, and more laboured letter, in reply to an anonymous critic who accepts the greater part of Locke's argument, but who still contends that "moderate force" "applied indirectly, and at a distance" by the civil magistrate, may bring people to the true religion by inducing them to weigh and consider the arguments in favour of the magistrate's religion as well as the Dissenter's own. Locke, who is a very clear-sighted logician, and a formidable though prolix controversialist, in general has an easy victory over him. He shows that this moderate punishment would be unjust because inflicted on Dissenters for no fault; that if long continued it would become immoderate and severe; while admitting it to have any effect, the argument in favour of it would justify extreme persecution, and not merely the persecution of non-conformists in England, but of Protestants in France, and of Christians in pagan and Mohammedan countries. He shows further that if the view were a sound one it should be applied to conformists as well as non-conformists, since both alike in many cases assent to their religion on wrong grounds, and without much examination; and therefore if penalties are good to make people weigh the grounds of their religion, there should be penalties for all. Further, that punishment in all degrees is only good to produce conformists and mere professors, but not convinced believers. After a

vigorous, unsparing, and prolonged polemic, he finally disposes of his enemy at nearly all points.

But there is one somewhat doubtful argument employed by Locke, namely, that civil society was constituted solely for the protection of property, life, and liberty from the attacks of others; that the sword was intrusted to the civil magistrate, but not for the purpose of enforcing religious truth. It is objected to this that civil society was instituted for all the good ends that can possibly be attained by it, and amongst these ends the spread of sound religious doctrine. Locke's reply is that there was no need to intrust such a power to rulers, as there was in the case of temporal concerns; each one being able and bound to seek the truth for himself, and the different conclusions men might come to on their own responsibility not doing any harm to others. This, we have seen, is a doubtful argument at best, but it would have been wholly inapplicable to the primitive people who formed a government by the social compact. He rates the reason and the knowledge of the average man of to-day in civilised countries far too high, while the primitive men appear to have been like the savages of to-day, and very little capable of "seeking the truth for themselves." But he is more successful where he tries to show that far greater evil would result from punishment, whether moderate or extreme, applied to produce conformity.

The most that Locke does in his second letter is somewhat to confirm and fortify the argument of his first, and this he does with much repetition and slaying of the already slain. Not content, however, with this, he follows some time after with a third interminable letter in which the original thesis, attack and reply, rejoinder and surrejoinder, are all marshalled in endless length and bewildering prolixity. Nothing additional is gained for his cause in spite of all his subtle logic fence; on the contrary, his argument is weakened. He exposes his own line so much that he makes admissions that invite attack. It would have been better if he had contented himself with the first and second letters, and let the subject drop, which in the third letter merely becomes a long logomachy, in which, however, Locke has usually the last and the best word.

§ 4

The mistake of Locke on this great topic of toleration was to deduce it from the assumed different ends of the State and the Church, to lay down that religion is not an affair of the State. That is true now, but it was not always true. Law and religion were inextricably mingled in early legal systems, as Maine tells us (*Ancient Law*), and the maintenance of religion was the first concern of the State. There were even theocracies or religion-States, such as that of the Jews (and, to a lesser extent, the Mohammedan Caliphates), which were founded on religion, and which could not tolerate any other religion by their very principle of existence.

Locke lays down an absolute argument, and would apply it to all States, past and existing, while it only applied to the modern civilised States of Western Europe. Toleration is best now and henceforth, and a good deal on Locke's grounds; but would it have been always best, or even possible? Let us cast a glance on history. The Jewish people were not permitted to tolerate idolators by the Mosaic dispensation, because otherwise the State would have been in perpetual danger from the idolatries and false gods of the surrounding nations; a danger and a temptation so great that, after many lapses into it and recoveries, the greater part of the nation finally gave way to it and was destroyed as a nation and mingled with other idolatrous races. Intolerance was necessary to save their polity and religion, which was the most essential part of it, from dissolution.

In the Roman world the ruling classes, after their extensive conquests, were from policy tolerant of the variety of religions which they found in the conquered regions, though the Roman people adhered obstinately to their own. There was no attempt to force unity of doctrine, because the ruling classes, a little sceptical about their own religion, thought that all religions were serviceable forces in the cause of order. But when Christianity came offering itself as the sole true religion, and a universal religion, the attitude of the rulers became different. The Christians were persecuted by Nero, even by Marcus Aurelius,

the wisest and best prince who ever ruled. Was he justified in persecuting them? He persecuted them because, first, he did not believe the new doctrines to be true; secondly, because he thought that, even if true, they would, if widely accepted, dissolve Roman society, of which he was the guardian. He thought their religious opinions incompatible with the duties of a Roman citizen, because the Christians, looking to a celestial city and even an early passing away of the existing order of things, professed to be indifferent to mundane and civic matters. He was wrong as to their being bad citizens, but from his point of view and his position he could only so regard them, and he felt it his duty not to tolerate them. Accordingly he persecuted them, but only to such a mild extent as might prevent the heresy from spreading without rooting out the sect.

Will Locke's argument apply that he was not justified in persecuting; that the civil magistrate, the prince, may not use force because the end of the State is only to protect life and property? With the Romans it was more, to maintain and defend their religion as well as protect property. The emperor was the head of the religion, the "defender of the (Roman) faith." Can it be said that he was not justified because he could not be certain that the new religion was not true? He could not be certain indeed; still he was the wisest man of his time, and he felt morally certain that it was not true, and more certain, if possible, that it was incompatible with the continued existence of the Roman State, even though its high morality contrasted favourably with dissolute Roman manners. But should he not have trusted to the inherent tendency of Truth to prevail, if she has but a fair field and no favour or force is employed? Should he not have had the robust faith that what is true cannot be hurtful to society in the long-run, though it may disturb a corrupt society? But this is to suppose that Marcus Aurelius had the liberal ideas on toleration that Locke had in A.D. 1690, ideas that were only born after a long struggle and dreadful religious wars for a century over half of Europe. We know now that toleration is best for civilised modern nations, and

even more toleration than Locke would allow; but it was not so with the emperor. He was bound to assume that the religion of his country was the truest; and if a competing and especially an exclusive religion offered itself, to resist it; if the subversive doctrines had effected a lodgment, to provide an antidote as soon as possible.

Christianity was not stamped out. It conquered, and then the orthodox, or those who believed they were the orthodox, when they had the power persecuted in their turn and stamped out all heresies, and they were numerous in the early Church. They were bound to do so, with their lights and faith. Give all the heresies, all the sects, a free arena within which to dispute it and the process would have been endless, the confusion and danger great. Many sects would have arisen and established themselves; the unity of the Church would have been lost, and Christianity could not have become a world-religion whose great mission was still before it, to convert and humanise the barbarous nations of Europe. It was necessary at all hazards at that time to have unity of spiritual authority and unity of doctrine. For this purpose the strongest had to suppress or make the other sects to conform. Besides, convinced men, if they have the power, *must* persecute, unless they discover that persecution may defeat its end and produce a greater number of heretics, or that it may give rise to retaliatory persecution. Where they are sure that this would not be the case, they have all the argument on their side. As far as they can see they are acting for the glory of God, the good of society, and the salvation of the soul of the individual.

Accordingly the orthodox persecuted the Arians and all other dissenting sects, and there was a long unity till the Greek schism, the first great division in the Church. But the Western Church put down all sects within her own pale, the Albigenses, the Lollards, the Hussites, the followers of Savonarola. After the grand schism at the Reformation, Philip II., a conscientious bigot and the most powerful prince in Christendom, felt it a religious duty to persecute those who embraced the reformed doctrines; and, according to Professor Seeley, he

could not do otherwise. He tried to stamp out the poison of heresy in the Low Countries, and but for the unparalleled heroism, the prodigious and long-sustained efforts of the Dutch, he undoubtedly would have succeeded, as he did in Spain and the other parts of his dominions. On two grounds history will justify him in making the attempt. He firmly believed he was right, and that the welfare of the State forbade toleration, at least in Spain, if not in the Netherlands. The reformed doctrines after a long civil war were nearly suppressed in France, and Louis XIV. finished the work. They were stamped out in Bohemia. But in Sweden, Denmark, Scotland, Northern Germany, and England the reverse took place. The case of England was peculiar. When the reformed doctrines appeared, Henry VIII. took his stand and never wavered. He reformed certain abuses in the Church, dissolved the monasteries, but would admit of no reform in doctrine. He was a sound Catholic in all points except that he denied the supremacy of the Pope, and would himself be Supreme Head of the Church. He punished the Catholics if they denied his supremacy, the Protestants if they denied his Six Articles containing the essence of the Catholic doctrines; in the second case to save society from a heresy that convulsed the Continent and to save his subjects from a deadly peril to their souls. Had he lived twenty years more (he was only fifty-six at his death), very likely the Reformation in England would have been checked effectually, though not without much persecution, perhaps rebellion. He died at a critical hour. The Reformation was favoured by his brother-in-law the Duke of Somerset and by other nobles who had shared in the spoils of the Church property. The Reformation, which had already spread far in an underground sort of way, being now encouraged and established, spread still more. The Reformers in their persecution were forced to employ their adversaries' weapon in self-defence. Then came the short but terrible reaction and persecution of Mary's reign, which, had Mary lived as long as her sister Elizabeth, would probably have succeeded. Most fortunately this did not happen; and fortunately Elizabeth had embraced most of the reformed doctrines.

She and her ministers persecuted, and were absolutely compelled to persecute, the Catholics; her crown, her very life, as well as the fate of the Protestant religion, being at stake from the Counter-Reformation. After her death James had to continue persecution owing to the Gunpowder Plot. There was not the same need for repression in the time of Charles I. Though the Parliament continued hostile to the Catholics, Charles himself and Laud preferred to persecute the Nonconformists; finally, Charles in an evil hour tried to force Episcopacy on the Scotch, an attempt which precipitated a crisis, and ultimately a civil and religious war. The persecution of the sects had not been sufficient to root them out or to prevent them from spreading. The Independents and Presbyterians in England had grown too strong, and Laud's persecution came too late. They joined and formed the strength of the parliamentary party; and chiefly owing to their religious zeal and enthusiasm they overthrew the king in the field, abolished the Monarchy, the House of Lords, and the Episcopal Church.

The Parliament, having conquered, in its turn persecuted the Episcopalians and the Catholics; and it was natural, when triumphant, they would follow the example set them. Cromwell was the first who showed a tolerant spirit. After the Restoration Charles II. fell back on the ill example of his father and persecuted the Presbyterian Church, a policy that was continued by his brother James II. It was the most terrible and prolonged persecution that that Church ever suffered; but, far from being successful, it materially helped to bring about the spirit of toleration in England which soon after manifested itself. The time was come for toleration, and Locke's plea came at this opportune moment when most of his arguments told with great force.

The great argument for toleration, but one not always applicable, is that truth in religion comes from the collision of minds. Truth is all the better, and all the truer, from having to contend with rival opinions. As Milton says, "Let her and falsehood grapple; who ever knew Truth put to the worse in a free and open encounter?" And the

toleration should be universal, embracing even the atheists and those who attack the fundamentals of society, so long as the latter confine themselves to arguments. Atheists, if there be any, should not be excepted, first, because people are not agreed in their definition of "atheist." For example, is a materialist who deduces the universe and all within it from atoms an atheist; or a pessimist, who thinks the principle at the bottom of the world necessarily produces more evil than good; or a Comtist, whose only Deity or supreme Being is an abstraction called Humanity?

Different persons would answer differently, and philosophical speculators might find themselves dubbed atheists, and denied toleration on Locke's principles. Far better to tolerate all and give them all "ample verge." All the above-named philosophic sects, and some genuine atheists under the name of secularists, have had freedom for many years past. They have been met by argument, and they have got the worst in the encounter. Who now hears of the rude atomism and materialism of Huxley and Tyndall and Clifford so loudly vaunted twenty years ago? Even the worshippers of Humanity are growing silent; they have failed to convince; or they have been beaten out of the field by reason, a much better way than by the infliction of disabilities or other penalties. Not that we have yet come to a full and perfect toleration. There are still some penalties inflicted on people on the score of their religious opinions; but happily we have got farther than Locke or Rousseau, and what remains of the evil spirit is slowly but surely dying.

BURKE

I. REFLECTIONS ON THE FRENCH REVOLUTION (AND THE FUNDAMENTAL INSTITUTIONS OF SOCIETY)

§ 1

The most famous of all English writers on political philosophy, and, with the exception of Hobbes, the most original, was Burke, who had the further distinction of having been also a statesman or "philosopher in action" as he calls the statesman. When yet a very young man he published his *Vindication of Natural Society*, a clever book on social philosophy, in which he imitated the easy style of Bolingbroke so successfully as to deceive the best judges. As to the matter of the book, he endeavours to show that the same modes of reasoning employed against revelation, as contrasted with natural religion, would equally condemn civil as opposed to natural society; the evils necessarily incident to all civil society being described in language worthy of the *Origine de l'Inégalité* of Rousseau, whose spirit it often breathes. The work was able, sometimes eloquent, but it was not original, and makes no contribution to political philosophy, though it served to introduce Burke to the notice of Mr. Gerard Hamilton, the Secretary for Ireland, whose private secretary he became for some years.

In 1765 came his real opportunity. He was appointed private secretary to the Marquis of Rockingham, a principal magnate in the Whig party, and a high-minded man, but of only moderate abilities. Burke was returned in the same year to Parliament as member for the pocket borough of Wendover, and in Parliament at once proved himself the greatest orator in

the House, from his ample knowledge, exuberant imagination, and easy command of sonorous and magnificent language. In 1769 he published his *Observations on the State of the Nation*, in which, by his mastery of economical and fiscal subjects, he proved himself more than a match for Grenville, the great expert in the "political arithmetic" of the time. In 1770 his celebrated *Thoughts on the Present Discontents* appeared. This was a manifesto for the Whig oligarchy, and contained a powerful and scathing attack on the new policy of the Court party, which tried to sap and break up party connections (especially those of the Whigs), and to recover the prerogative of the Crown, which had lapsed under George I. and George II. It is a very able appeal, couched in vigorous and sometimes stately and splendid diction, and otherwise remarkable for the contrast it presents with his more important political writings called out by the French Revolution twenty years later. In the former he defends liberty as the greatest good, pleads the cause of the people, argues that when they are discontented and rebel that it is from oppression and suffering, and that the presumption is at least in favour of the people as against their rulers; finally, he not obscurely intimates that the time may shortly come when the only alternative may be resistance to the Court or a contented acquiescence in the "dull repose of despotism." The time never came, though Burke continued long a virulent enemy of the King and the Court party. In 1774 he made his great *Speech on American Taxation*, and in 1776 a companion and complementary *Speech on Conciliation with America*. These are, indeed, great speeches, but they are also very largely political pamphlets and very powerful ones, that is, we have great practical questions involving the future of America, and perhaps of England, treated in part scientifically and under the light of principles, but also in a party spirit, with rhetoric and withal with a certain easiness and literary grace which distinguishes them from abstract speculative politics. They are, in fact, masterpieces of practical political wisdom; and if their counsels had but been followed, the great Anglo-Saxon race of to-day might have formed the common subjects of a great united empire, and a ruinous and humiliating war have

been avoided. In fact, Burke's counsel deprecating war with America appears just as wise as it appears wrong or doubtful twenty years later when urging on war against revolutionary France.

He became after this a "man of light and leading," to use his own phrase; was long the inspirer of the Whig party, though strange to say, considering his pre-eminent services, he never had a seat in any Cabinet. He carried his scheme for economical reform, which he introduced in a masterly statement. He opposed parliamentary reform, extension of the suffrage, the relief of the Dissenters, that is to say, he was nothing of a Democrat, but merely a Whig with Conservative instincts, whom Dr. Johnson believed to be a Tory at heart. He made a great speech in defence of Fox's India Bill (1783); opened the impeachment of Warren Hastings in another speech of unapproachable eloquence and of almost superhuman effort. He displayed great violence and want of temper and discretion during the debates on Pitt's Regency Bill (1789), was in consequence (as Mr. Morley tells us) neglected by his own party and insulted by the younger members of the opposite party, was beginning to feel that he took party strife too much to heart, and that he manifested an over-solicitude "relative to the present state of affairs" unsuitable to his time of life. He wished to take things cooler, to feel that they should be more indifferent to him. This was early in 1789. He was then over sixty-one years of age, and he began to dream of a peaceful country life in the evening of his days, and meditated an early retirement from Parliament, when suddenly there came news from France that changed the current of his thoughts and the tenor of all his remaining years, that drove away his thoughts of a retired life, and summoned him to take a leading part on a greater stage than the House of Commons,—the stage of European politics at the most critical hour of European history.

For the French Revolution had broken out, and for the next six years the eyes of all Europe, and especially the eager eyes of Burke, were turned on France, and fascinated by the extraordinary drama that there began to unfold itself.

§ 2

From the very first he had something like evil forebodings. In him alone the taking of the Bastille by the populace aroused no joy or exultation, but only doubt and apprehension, which fresh excesses and the rural *jacqueries* speedily converted into alarm and aversion. The capture of the Bastille looked too like unjustified rebellion against a well-disposed prince; the killing of the governor too like a cruel and savage murder. But it might be only a temporary outburst of "the old Parisian ferocity," and if so, things might proceed more hopefully. He waited and watched the course of events with rapt and anxious attention. After the famous night of the 4th of August, when the nobles and clergy surrendered their privileges and feudal France fell, his apprehensions deepened. After the extraordinary days of the 5th and 6th October 1789, when the king, queen, and infant prince were compelled by force to return to Paris from Versailles under the most painful and humiliating circumstances, he finally made up his mind as to the evil character of the new Revolution. On 9th February 1790 he made a speech in the House, which gives in sum the views he afterwards maintained in his book. "The French had shown themselves the ablest architects of ruin that had hitherto existed in the world." . . . They had completely pulled down to the ground their monarchy, their church, their nobility, their law, their revenue, their army, their navy, their commerce, their arts, and their manufactures; and we were in danger from the evil example; with regard to government, a danger of anarchy—a danger of being led, "through an admiration of successful fraud and violence to the excesses of a ferocious plundering and tyrannical democracy," and, with regard to religion, a danger of atheism. "They have laid the axe," he says, "to the root of property"; and they have justified all their proceedings by a "sort of digest of anarchy called the rights of man." Such was his view thus early formed. But he meditated longer that he might see the final shape of the constitution which the National Assembly was evolving. He sat down to write his thoughts at length in November, wrote

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steadily and at fever-heat for some months; then set aside his work for a time to get the benefit of the further development of events and further reflection on the new and portentous thing. He returned to the work, more than ever convinced of the correctness of his views on French affairs, and he finished it with an elaborate criticism of the French Constitution, which was by that time before the world. In October the long-expected work appeared, and at once produced an extraordinary impression.

It well deserved to do so. For it is an extraordinary and in some respects a unique book; a deep book on political philosophy, but one which any educated man could comprehend, owing to its freer and broader treatment of topics, some of which do not easily lend themselves to exact distinctions, or the abstract methods of previous political philosophers; a book in which all the powers of the thinker, the wisdom of the practical statesman, the arts of the rhetorician, the felicity of expression of the man of letters, are blended to produce a marvellous whole; a book withal in which are to be discerned in rough the lineaments of a new political philosophy, governed by a new method of treatment, a method different from that of Hobbes and Locke, different also from those of his contemporaries Rousseau and Kant;—the first English book, in fact, in which the new Historical Method of inquiry and explanation is employed.

The immediate object of the book, however, was a practical one, not to write a treatise on political science, but to turn the tide of admiration which since the capture of the Bastille had been flowing in favour of the Revolution into aversion to its excesses and ferocities, and alarm at its evil example of property plundered with impunity; to crystallise the mass of fluid and uncertain feelings in a direction hostile to the Revolution; a thing which might be done by a man with intellect, knowledge, and rhetorical gifts, and which done in time might produce great and far-reaching results. He felt that it was a great crisis, that great things were in expectation and impending everywhere, that in many countries there was "a hollow murmuring underground," a "confused movement that threatens a

general earthquake in the political world." He knew his powers. He saw his great opportunity, and having honestly and sincerely made up his mind he set himself to his task. And he effected his purpose. The reaction and change of opinion he aimed at was effected in England and soon over Europe by the timely appearance of the book, which had an unparalleled circulation.

It was indeed a fateful moment, and it might be almost said that the attitude of England and of the chief continental Powers to the Revolution depended on which side one man would take, and that man Burke; for he alone at that moment possessed the necessary powers to instruct as well as persuade the educated and influential classes. A great speech was not enough. A book was requisite which could be read by many in any part of the country, which could be read abroad, over Europe. And so Burke's early habit of literary composition and his careful study of the best political philosophy stood him in good stead in this critical hour.

There are defects and errors in the book. It is unsystematic. The plan laid down is unfinished. There is a most imperfect account of the causes of the great and startling event called the Revolution, which he ascribes to a conspiracy between the new moneyed classes and the "political men of letters," alike envious of their betters and ambitious to take their place in the government of the country, which last, though it was a fact, was only one out of many and some of them complex causes. Not only was his theory of causation defective, his predictions were not fulfilled.[1] Things which he did not believe at all possible occurred, and more and more alarmed him as time rolled on. Prodigious things not within the ken of his philosophy, events that no knowledge of history could have enabled anyone to foresee, as in fact he afterwards allowed, took place.

The permanently valuable part of the book consists in its fresh treatment of the fundamental political topics, in connection with the principles of human nature on its political and social side, sometimes in single pregnant sentences, sometimes

[1] Except in certain instances, as when he prophesied that if monarchy should again ever attain entire ascendency in France, it would be the "most completely arbitrary power that has ever appeared on earth."

in whole pages together, and apart altogether from his main subject.

The scattered portions when brought together are found to contain something like a complete and coherent political system with a political doctrine; a new theory of the origin and nature of society and of government; of the different kinds of governments, with their merits and drawbacks; of the different ends proposed by the different governments; of property and its justification; of the Church and the State, their several functions and intimate fusion in the British polity; of the anarchic and the real rights of man; in fact, all the topics treated of by Hobbes, Locke, and Rousseau, together with some not discussed by them; but all from a new point of view, which allowed him to treat the subject in a different and more attractive style than was compatible with their abstract and geometrical methods.

But it is especially when taken in connection with his *Appeal from the New to the Old Whigs*, which is really a continuation of the *Reflections*, a filling up of gaps and omissions in the latter, that we get his complete political theory. It is in the *Appeal* we get his theory of the people and their natural leaders and chiefs, his searching criticism of Rousseau's dogma of the sovereignty of the people, and of equality, together with other important matters necessary to round his system.

In the two books taken together we have in fact a new answer to the old and fundamental political questions, and a defence of civil society, attacked in theory by Rousseau and in earnest fact by the advanced Revolutionists across the Channel; a theory different in most of its conclusions from that of Hobbes, but yet so far agreeing with him that he thinks an established government or existing constitution of whatever form should be accepted and obeyed; in particular, that our own balanced and ancient constitution should be "enjoyed not discussed." It is different again from the theory of Locke, but yet so far agreeing with his own earlier Lockian creed that he thinks a despotic or absolute monarchy is not a legitimate government, and that liberty, that is, as he explains, a "regulated liberty inseparable from justice," is the greatest good.

His theory again is different from that of Bentham, his immediate successor as chief political prophet, in that he does not defend laws and political institutions solely on the ground of general utility, but also on the ground of long continuance or Prescription.

§ 3

The immediate occasion of the publication of the *Reflections* was the preaching of a sermon by the eminent moralist Dr. Price, on November 4, 1789, at a dissenting meeting-house in the Old Jewry, in which, after exulting in the spectacle of the King and Queen of France being led in triumph to Paris, he maintained that the English people had acquired by their Revolution of 1688 three fundamental rights, namely, to choose their own governors, to cashier them for misconduct, and to frame a new government at pleasure. This Burke denied, and he disclaimed the alleged rights in the name of the English people. Such political rights and privileges as they really enjoy, he declares, are inheritances derived from a long ancestry stretching from Magna Charta to the Declaration of Rights (1689). They were not rights conquered at the Revolution, especially the three alleged rights of Dr. Price were not conquered. Their real rights bore little resemblance to the new rights of man with which Dr. Price would identify them. They were rights, liberties, franchises inherited, not "natural rights" or "rights of man." They were derived from ancestors, to be enjoyed and then transmitted to posterity, just as property is inherited, enjoyed, and passed on.

By this view of the people's liberties (and the like holds of the rights of the Crown and of the nobility) our political system becomes, according to Burke, "the image of a relation in blood binding up the constitution of our country with our dearest domestic ties, and adopting our fundamental laws into the bosom of our family affections,"—a view which does not exclude "a principle of improvement, while it furnishes a sure principle of conservation and a sure principle of transmission. In this way the spirit of freedom is tempered with an awful gravity, and the sense of long and liberal descent inspires with a sense of

habitual native dignity which prevents upstart insolence. . . . Our liberty becomes a noble freedom, having pedigree and illustrating ancestors."

Our whole political system is a thing depending on inheritance and long history; in France it was otherwise. There the people had lost their political inheritance, their ancient privileges, though they had not lost the memory of them. They might have been recovered in precise form at this Revolution. The French people might have gone back on their past history; they might have recovered their original constitution, the elements of which existed formerly "very nearly as good as could be wished." But they have not done so, but have made the fatal mistake of breaking completely with their past history, of acting "as if they had never been moulded into a State and had everything to begin anew."

And supposing the past generation had appeared unworthy, they might have gone still farther back the long stream of their history till they found an ancestry worthy of their respect and honour; or they might have copied from the English constitution, to their own benefit and as a good example for the world.

The French reformers had simply missed a golden opportunity. "There was a smooth and easy career of felicity and glory laid open . . . beyond anything recorded in the history of the world." Instead of this happy consummation, France was a wide ruin materially and morally; poverty over the land, a ferocious dissoluteness of manners, insolent irreligion in opinions and practice, universal corruption—the instructive monuments of rash and ignorant council, proceeding from extravagant and presumptuous speculations, which have taught these reformers and councillors to disregard all the past of their country. Were these terrible results, like the devastation accompanying a civil war, at all necessary? Far from it. There was no opposition to the National Assembly. It was a "pure choice of evil."

What was the cause? The composition of the National Assembly, he replies, made up chiefly of country advocates, village curés and doctors, but without men of property, especially of landed property.

Compare such a body with the British House of Commons, "in which is to be found everything illustrious in rank, in descent, in hereditary and acquired dignity, in cultivated talents, in military, civil, moral, and political distinction that exists in the country." And then observe the fact that the House of Commons, though its power is very great, is "limited by laws, constitutional usages, positive rules of doctrine and practice, limited again by the House of Lords and the power of the Crown." In fact, its powers are but a "drop of water in the ocean" compared with the powers usurped by an Assembly that was restrained by no fundamental law, no convention, no respected usage, and so far from being checked or limited by a constitution that it may make any constitution it pleases, and was now engaged at that very congenial task. There was absolutely no restraint. There "was nothing in heaven or earth to control them." Not the representatives of the clergy certainly, who were chiefly discontented and ignorant country curates, and not the best of their order, or they would not have abandoned their proper function of guides to their flocks; nor a small number of nobles, who had betrayed their trust to gratify their ambition. In everything in France they "were off the high road of nature," and the fundamental reason was because "the property of France did not govern it," with the result that property was destroyed and liberty had ceased to exist. There was but a paper circulation and a stock-jobbing constitution.

§ 4

This first group of reflections and sweeping denunciation of the National Assembly merits some words of comment. And, first, the notion that Frenchmen might have claimed their liberties as an inheritance of which they had been dispossessed, or fallen back on a long-forgotten constitution, is away from the facts.

The plea they urged was different. We claim rights, they said, that all men *should* possess, that belong to the nature and dignity of man as such, and especially to men in the

most civilised communities, rights that our best philosophers say we should possess, but which neither we nor our fathers ever did enjoy, or the latter only in imperfect and doubtful form a long time ago. We believe in natural rights. There is a natural justice so long as there is a moral sense and a sense of justice in men. These natural rights, civil and political, that we should possess, we have from time immemorial been deprived of, and we now reclaim them, not on the same grounds as the English people, who enjoy most of them, can claim them, not on grounds of inheritance and long possession, but for an opposite reason, because we ought to enjoy them, because they are natural rights not possessed by us. And it would only make this claim the stronger, if it be true that in past time we possessed them. If we once possessed them, our oppressors and plunderers can only plead prescriptive rights for their oppression. But no time, however long, can create prescriptive rights to deprive us of natural and imprescriptible rights, the right to liberty and the fruits of our labour, of which the great majority of Frenchmen are deprived.

And this plea is sound, as we shall see later when he formally raises this very question. The people of a civilised country ought to enjoy liberty, until at least it proves itself unfit to have it, as may happen. And its citizens ought to have the benefit of social justice as revealed to the wisest jural and moral opinion of the age. But the French people before 1789 neither enjoyed liberty nor could obtain justice, and the time had arrived to claim them with power and emphasis. When is the right time? When the desire for them is strongly and widely aroused, as it was in France in 1789. The result was the speedy fall of the old government, and temporary anarchy; a political as well as an agrarian and social revolution unparalleled in history, of which disorder, lawlessness, and crimes were necessary accompaniments.

According to Burke, the task of the Assembly was easy, a "smooth career of glory." But few historians of the Revolution agree with him. To fall back on a dimly discernible constitution in the far past would have been impossible, and would not have satisfied the exigencies of the time; while to imitate

the English one, full of imperfections and unworkable, without corruption, as the chief animating principle of the whole system, however suitable to English circumstances at the time, would have been a questionable course, at all events was one which did not recommend itself to the ablest amongst the members of the Assembly. And in spite of Burke's denunciations there were able men in it. Not unnaturally then, when they had a free hand, they aimed at producing the best constitution rather than copying a model full of defects; not unnaturally, too, in their constitution they asserted and affirmed the doctrine of natural rights, just as the framers of the American constitution had done some years before.

In the meantime the principal measures, such as the abolition of the remains of the feudal system on the night of 4th August, were absolutely necessary, and the sacrifices required were even made cheerfully by the representatives of the nobility, while the partial confiscation of the corporate property of the Church, so passionately denounced by Burke, was a defensible measure that has since been frequently imitated. It was even a necessary measure in the state of national bankruptcy in which the Assembly found the finances,[1] while it mitigated the evil necessity as much as possible by allowing salaries to the *sermenté* clergy and pensions to the monks.

For the disorganisation and anarchy that followed, the Assembly was not much to blame. The army was disorganised, authority paralysed; the peasantry in a state of revolt against their Seigneurs; a social war was going on, if it can be called a war where the people met with so little resistance; industry was interrupted, famine in the land, a state of universal and unprecedented ferment and agitation,—all this, together with bankruptcy, an inheritance from the ancient régime. In short, there never was such a task put before governors or legislators, not even before our Long Parliament. It is true that many of the members were men of mere theory, and comparatively few had had experience in government or affairs. But they were not specially mindful of their own interests, as Burke argued

[1] Lecky, *History of England*, vol. v. p. 483.

they must be. They were as disinterested a Parliament as ever met—full of earnestness, enthusiasm, and patriotism. The lawyers, though numerous, were not in a majority, and they did not legislate mainly with a view to make professional business for themselves, as Burke argues they would do. Nor were the traders the ignorant men he represents them, but intelligent men of the higher commercial class. Moreover, there were many judges of the inferior tribunals in the *Tiers État*. As to the absence of the landowners, it is no wonder they were not chosen by the peasants, who desired mainly that their dues and burdens should be diminished. But in the two other orders the landowners were fully represented. That the inferior clergy was so numerous was due to the fact that the great body of them were dissatisfied with the previous order of things, which gave all the loaves and fishes, all the prizes, to the higher clergy with aristocratic connections, leaving the great body in hopeless poverty.

All the ills of France, according to Burke, came from the unnatural fact that property did not govern. But why should property govern in France at that crisis? Property was mistrusted, because it was contrary to its interest to make the necessary reforms, because if it had not in the past governed unjustly, it yet enjoyed the fruit of the bad government which protected the unjust privileges of the propertied classes. The Revolution, in fact, as M. Taine in his great work says, was essentially and above all else a rising against property and unjust laws of property, especially landed property. In fact, the day, long deferred, was come for a reckoning. A great change was required in the government and in the law, above all in the laws respecting property; and in these circumstances men of landed property would not be the fittest legislators and rulers, nor would the twenty-four millions of common people, especially those in the rural parts, be likely to send up landed proprietors to represent them. They did, however, send up other classes of rich men, including many financiers and merchants,[1] but not farmers-general of the taxes.

He raises the important question of the true qualification for

[1] Lecky, *History of England*, vol. v. pp. 431, 432.

government, a question more fully considered in the *Appeal from the New to the Old Whigs*. And first as to those who are not fit to govern. Common labouring men, mechanics, and artisans, cannot be equal to the situation. Such men indeed ought not to suffer oppression, but the State suffers oppression if such as they, either individually or collectively, are permitted to rule. "You may imagine that in calling them to power you are only opposing unreasonable prejudices. You are in reality merely at war with nature."

Would he therefore "confine power, authority, and distinction to blood and names and titles"? His reply is very remarkable, and deserves full quotation. He affirms that "there is no qualification for government, but virtue and wisdom, actual or presumptive; wherever they are actually found, they have, in whatever state, condition, profession, or trade, the passport of heaven to human place and honour. Woe to the country which would madly and impiously reject the service of the talents and virtues, civil, military, or religious, that are given to grace and to serve it; and would condemn to obscurity everything formed to diffuse lustre and glory round a State. Woe to that country, too, that passing into the opposite extreme considers a low education, a mean contracted view of things, a sordid mercenary occupation, as a preferable title to command. Everything ought to be open, but not indifferently, to every man. No rotation; no appointment by lot; no mode of election, operating in the spirit of sortition or rotation, can be generally good in a government conversant in extensive objects. . . . I do not hesitate to say, that the road to eminence and power, from obscure condition, ought not to be made too easy, nor a thing too much of course. If rare merit be the rarest of all rare things it ought to pass through some sort of probation. The temple of honour ought to be seated on an eminence. If it be opened through virtue, let it be remembered too that virtue is never tried but by some difficulty and some struggle."

"Nothing is a due and adequate representation of a State that does not represent its ability as well as its property. But as ability is a vigorous and active principle, and as property

is sluggish, inert, and timid, it can never be safe from the invasions of ability unless it be out of all proportion in the representation. It must be represented, too, in great masses of accumulation, or it is not rightly protected. The characteristic essence of property, formed out of the combined principles of its acquisition and conservation, is to be *unequal*. The great masses, therefore, which excite envy, and tempt rapacity, must be put out of the possibility of danger. Then they form a natural rampart about the lesser properties in all their gradations.[1] . . . The plunder of the few would indeed but give a share inconceivably small in the distribution to the many. But the many are not capable of making this calculation; and those who lead them to rapine never intend this distribution."

Now, as to the general principle here laid down that property rather than ability should rule, it would seem to be sound, and in settled governments in our day it is largely realised. It is realised in England, Germany, Austro-Hungary, less so in France or the United States where the deputies are paid, or even in Russia where a skilled bureaucracy rules under the Czar. That property should rule, directly or indirectly, is in the natural course of things, and is necessary if the protection of property is, as all political philosophers agree, a chief end of government. To give it the necessary security it would seem necessary to give the holders of the larger masses of it a large share of political power. But it is also necessary to give ability as such, even with no property, *some* share, as Burke allows; to give a share to the "worthiest" and the wisest, on account of the benefits they may confer on the State. And doubtless the greater part of the ability of a civilised community will naturally be directed to more profitable and more suitable, if less dignified, fields of activity in which it may acquire property for itself, or, if not property, reputation; to industry, or art, or literature, or the learned professions. Still it is desirable, as Burke says, that a small

[1] But the lesser properties serve reciprocally to defend the greater masses, by rallying the smaller proprietors in defence of the principle of property in general, if attacked.

proportion of ability as such, political ability, as well as property, should be represented in Parliament or National Assembly.

In France, in 1789, there was much discontented ability, and hostile to landed property. It does not appear that any large proportion of such got into the National Assembly. A much greater number of advocates without briefs entered the next (the Legislative) Assembly and the Convention; able men, but full of theories and hostile to property, and then the remarks of Burke were fully borne out. There was, as Taine points out, a terrible ruin and a vast confiscation and plunder of property, though under the specious plea of State necessities. The property of the emigrant nobility was of course confiscated, as was that of the clergy in part; while in 1793 the rich, merely as such, were seriously in danger. This, however, was only for a time, though doubtless the danger was one of the reasons that made the despotism of the Empire so acceptable and readily endured. Property was secure, but ability also got its chance under Napoleon in the army and in the civil administration, as the necessary and best support of his authority. And this advantage which Talent owes to the Revolution it has held ever since, as well for its own benefit as for the general good of the State.

§ 5

To return to Burke's text. Besides discrediting the French Revolution, he is specially desirous of holding to reprobation Dr. Price and Dr. Priestley, the chief of the English sympathisers with it; and it is by alternately combating the Revolution and its English abettors that his own political philosophy, the permanently valuable part of the work, is evolved. Now, Dr. Price in his political sermon had denied that the English were a free people, because they were for the most part not represented in the House of Commons, which was elected by a small minority open to bribery and corruption. It was therefore vain, as Burke complains, to speak to such men of the liberties of Englishmen as a precious inheritance derived from ancestors, with title-deeds and armorial bearings, which

appeared to them like paying off all but a favoured few with fine words; equally vain to refer to the fundamental laws of the country or the fixed form of the English constitution under which this country was strong and prosperous. They care nothing, he complains, for antiquity, precedents, charters, or Acts of Parliament which, in their opinion, merely guaranteed a limited liberty to a limited class. They make appeal to a different charter, to the "rights of man," and whatever government does not allow these rights in all their plenitude, stands condemned. Their objections are "just as valid against an old and beneficent government, as against the most violent tyranny or the greenest usurpation." After this passing shot at their doctrine of the rights of man, which, however, hits deep, he goes on to state his own theory of the rights of man, an important and interesting theory, in which he throws out a challenge to his adversaries, while declining to join issue with their clumsy political metaphysics.

He allows that men in civil society have real rights, both political and civil. "If," he says, "civil society be made for the advantage of man, all the advantages for which it is made become his rights." Now civil society, and law its characteristic essence, differential feature, and binding force, was so intended, as all philosophers are agreed.

"Far am I from denying in theory; full, as far in my heart, from withholding in practice . . . the *real* rights of men. In denying their false claims of right I do not mean to injure those which are real, and are such as these pretended rights would totally destroy. If civil society be made for the advantage of man, all the advantages for which it is made become his right. It is an institution of beneficence; and law itself is only beneficence acting by a rule. Men have a right to live by that rule; they have a right to justice; as between their fellows whether their fellows are in politic function or in ordinary occupation. They have a right to the fruits of their industry and to the means of making their industry fruitful. They have a right to the acquisitions of their parents; to the nourishment and improvement of their offspring; to instruction in life, and to consolation in death. Whatever each man can

separately do without trespassing upon others, he has a right to do for himself; and he has a right to a fair portion of all which society, with all its combinations of skill and force, can do in his favour. In this partnership all men have equal rights; but not to equal things. He that has but five shillings in the partnership has as good a right to it as he that has five hundred pounds has to his larger proportion. But he has not a right to an equal dividend in the product of the joint stock; and as to the share of power, authority, and direction which each individual ought to have in the management of the State, that I must deny to be amongst the direct, original rights of man in civil society; for I have in my contemplation the civil social man, and no other. It is a thing to be settled by convention."

We have here, perhaps, the most important paragraph in the entire book, and fortunately, though it raises vital questions, it is tolerably clear and free from rhetoric or apparent bias.

It is to be noted that he allows to men in civil society certain real rights, while he denies others claimed by Dr. Price and other thinkers. He allows rights or "advantages" conferred by law, which is only "beneficence acting by a rule" (a description which would be true if there were no bad laws or class legislation). Apparently he does not believe there are any moral or natural rights as distinct from those conferred by law. And apparently all law is just and perfect and unsusceptible of improvement. But both of these are fundamental mistakes. Actual law may be bad, and there is such a thing as natural law as surely as there is moral law, of which the former is a part, a thing acknowledged by all moral philosophers, jurists, equity lawyers, by all except the later utilitarians, by Burke himself in another place. But natural law implies natural rights, or "rights of man" if anyone prefers the phrase. Such rights would be ampler in a state of nature, because the business of law is to limit some of them in society for the good of the whole. This natural law is earlier than civil or positive law, as morality is earlier; it is deeper than law, is the model to which law should approximate by incorporating as much as possible of it,

provided such addition is not contrary to the general good, or does not trench on the general liberty which is one of the greatest goods. The legal rights are never co-extensive with these natural rights, but they tend to approximate to them; they are sometimes, but not in many cases, in conflict with them, as where the law recognises slavery and gives the owner legal rights contrary to the natural right to liberty. And that natural law is the model which the civil law ought to follow, is recognised by all philosophers and jurists from Roman times to our own. It was recognised by Burke's contemporary, Blackstone,[1] as well as by the French jurists, and not alone by Rousseau. It has indeed been denied by Bentham on the ground of its anarchic tendencies, also nominally denied by Burke for the same reasons, and in consequence the doctrine fell into temporary discredit in England.

But it never lost credit in Germany, it is the foundation of the *Philosophy of Right* of Kant, while in England it has been taken up by Herbert Spencer into a deeper utilitarianism than Bentham's; and as it already is part of the English intuitional morality and of the Kantian morality, it is likely to prevail more and more in the future.[2]

Let us now take up the real rights of man as given by Burke. He allows to men the "right to the fruits of their industry," and to the "means of making their industry fruitful." But if so, was it just that more than one-half the fruits of the French peasant should be taken from him for generations by Seignorial exactions, monarchical and clerical taxes? Then in the case of large manufactures how are we to measure the "fruits of industry"? How much should go to the employer, the skilled, and the unskilled labourers respectively? Is all to go to labour, as the Socialists say, or is the amount to be settled by contract? Are the skilled and unskilled to get equal shares of the fruits? The real right here alleged does not carry us far; it is too vague. Then the children have a right to the acquisitions of their parents. Yes; but if several, is it in equal or unequal shares? By Roman law, which

[1] Blackstone's *Commentaries*, Introduction, p. 43.

[2] *Social Statics*, also *Man* versus *The State*, chap. iv.

the French Code has followed, the shares are made equal. By English law, following the custom of primogeniture, if a man dies intestate, his real property is assigned to the eldest son.

Other important questions are raised here, and not answered on Burke's principles. Is the law to follow our natural sense of justice (natural law), or to follow a custom or principle like primogeniture, suited to a past social state but less suited to our own or future ages? Should the parent be permitted to dispose of his property in an absolutely unfettered manner, and even to the extent of disinheriting one or all of his children? Is it one of the "real rights" of man to dispose of his property by will absolutely as he pleases, and to fix its destination for centuries after his death?

If a man have a right to the fruits of his industry, would not rents be unjust and oppressive which, in a country mainly agricultural, amounted to more than half of the fruits, and which, if, in addition, it was overpopulated, might through competition amount to the total produce except bare subsistence? We see that, even if Burke's real rights were admitted, they raise disputes that can only be settled by falling back on our sense of natural justice, assisted by reason, and so by covert reference to some natural rights of man. Again, he allows that a man has a right to a "fair portion" of "all that society, with all its combinations of skill and force, can do in his favour." But what is a fair portion? It would seem a share proportioned to his property, and, by consequence, a poor man's share would be zero. He certainly has not a right to an "equal dividend in the product of the joint stock." To this we must agree. Then as to political rights, he has not a right to "an equal share of the public authority or influence in the direction of the State," for in a given State that is a matter settled by convention, since we are not discussing the rights of man in a pre-civil State. What these primitive rights were is not in question. But, we ask, admitting a convention or original social contract, does it bind all future generations? Can a convention never be improved, altered, or made afresh? the terms of a bargain, originally imperfect, never be revised? Or, if the constitution

contains the terms of the convention, can it never be revised? and might not every adult male who is not a pauper claim to have a vote under it? Has he not a natural right—a right founded on justice—to a single vote as a man, though not to equal influence in the direction of the State, which everyone allows to be absurd?

But Burke, though professing disdain for political metaphysics, is obliged to go for a moment into that shaking quagmire. He admits that there may be a state of nature in which, as Hobbes maintained, men have a much greater amplitude of rights, of natural rights, than men in any civil society. He so far agrees with the theorists as to say that "one of the first motives to civil society, and which becomes one of its fundamental rules, is that *no man should be judge in his own cause.*" By this he abandons a very great and important right of man in a state of nature, or, as he calls him, "uncovenanted man," the right, namely, to judge for himself, to assert his own cause; also he abandons in great measure the right of self-defence, the "first law of nature." He gives up his right to be his own judge that he may get justice, and the private right of self-defence that he may get the stronger defence of the public sword; that he may get some liberty, he makes a surrender in trust of the whole of it.

Government is thus an invention, a contrivance of human wisdom, to provide for human wants. But outside of society and government there is the "want of a sufficient restraint on the passions." Here we have possibly a reminiscence of Hobbes. This restraint on the passions, not only of individuals but even of the mass and body, can only be exercised by a power out of themselves, and "not subject to that will and to those passions which it is its office to bridle and subdue"; such restraints, being useful, are also to be reckoned rights of men as well as their liberties — a doctrine which disposes of Rousseau's doctrine of the sovereign people, and Dr. Price's theory that the people can cashier their kings, unless the sovereign places these restraints on itself or agrees that it will suffer such restraints to be put on its capricious will. But he adds, as the liberties, the restrictions, vary with *times and*

circumstances, and admit of many modifications, it is folly to discuss them in an abstract manner.

He does not absolutely admit that civil society originated in a social contract, nor does he deny it. But he says, if it originated in a convention (social contract), that contract must be its law, and the legislative, judicial, and executive powers "are its creatures"; in other words, the form of government and constitutions spring from it, under which, therefore, man can no longer plead natural rights, but only such as have been settled by the constitution generated by the social contract. But, as he says, it is foolish to discuss the question in the abstract fashion, since constitutions vary with times and circumstances and countries. Let us therefore drop that way of looking at the subject.

He then goes on to show that "the moment you abate anything from the full rights of man each to govern himself, and suffer any artificial positive limitation upon these rights, from that moment the whole organisation of government becomes a consideration of convenience. This it is which makes the constitution of a State, and the due distribution of its powers, a matter of the most delicate and complicated skill. It requires a deep knowledge of human nature and human necessities, and of the things which facilitate or obstruct the various ends which are to be pursued by the mechanism of civil institutions. The State is to have recruits to its strength and remedies to its distempers."

And from this you might suppose that a constitution like the English one was made at a stroke or a sitting by skilful statesmen or constitution-makers like the Abbé Sieyes, instead of being a matter of slow growth and accommodating itself to changing circumstances, in particular to the changing power of king, aristocracy, and people. Our constitution has a history. It was not made at a particular time by mere statesmen. The wisdom and adaptation, such as they were in Burke's time, were never the result of the wisdom of one, though some of the particular changes and improvements came from superior statesmen and legislators. All this, indeed, Burke well knew, and elsewhere strongly insists upon it.

To make a constitution, he adds, is a delicate matter, and the "science of constructing a commonwealth, or renovating or reforming it, is, like every other experimental science, not to be taught *à priori*."

All this is directed against the men of theory, the Rousseaus, and Prices, and Sieyeses, the men who drew up paper schemes of constitutions without ever having mingled with affairs. There is some force in it when the details of a constitution are under consideration; then the man of practice is required, and good models, if they can be had. But still the origin, nature, kinds, and growth or history of constitutions are matter for "the professor of metaphysics," as he styles the speculators on government. He would rebuke their presumption in invading his province, because the science of government is a practical matter and intended for practical purposes—a matter which "requires experience, and even more experience than any person can gain in his whole life, however sagacious and observing he may be"; all which may be true, but little to the purpose. The French were making a constitution for the first time. They believed in their abstract rights, in natural rights, in the rights of man, and they meant to recognise them in their constitution, and not to follow the English model, of which Burke was so enamoured. As they had not experience, they had to acquire it. But they had the knowledge of other constitutions before their eyes, and they had the speculations of political philosophers like Rousseau, which counted, and rightly, for something, although subject to human fallibility.

Returning to the rights of man in society, they are at least, he thinks, different from the primitive rights in a state of nature, and it is absurd to confound them as if they were the same. The rights, as conceived by the theorists, are all extremes,—"in proportion as they are metaphysically true they are morally and politically false"; whereas the true rights of man are in a sort of "middle," or mean, incapable of definition, but still discernible.

As before asserted, the rights in government are those advantages which may lie in balances between different goods,

compromises between good and evil, even between evil and evil, and true political reason is a computing principle; adding, subtracting, multiplying, and dividing these quantities, which are not mathematical or metaphysical, but true "moral denominations."

With the theorists the rights of the people is the same as their power, which makes might equal to right. The whole of them, however, have no right inconsistent with virtue, especially prudence, the chief virtue. They have therefore no right to what is not reasonable, or to what is not for their own good; which last is certainly sound and important doctrine, though whether they might not plead for a right to vote for representatives as an advantage to themselves, and not inconsistent with the good of the commonwealth, is a question left unanswered.

And here he leaves this central and important question, after rather imperfect treatment, to be taken up afterwards in the *Appeal from the New to the Old Whigs*.

§ 6

A third passage in Dr. Price's historic sermon, where he speaks of the people of France "leading their king in triumph, and an arbitrary monarch surrendering himself to his subjects," rouses Burke's indignation. Such a spectacle was not the triumph of France, assuredly, nor yet of the National Assembly, forced to let its authors and chief actors go unpunished because equally with the king they were obliged to be submissive to the savage sovereign people. The 6th of October was such a day as "to blot the sun out heaven." It was a day that the better members of the Assembly wished to forget, but which history will not suffer to be forgotten. "History, which exercises her awful censure over the proceedings of all sorts of sovereigns, will not forget either those events or the era of this liberal refinement in the intercourse of mankind." And then he himself briefly re-tells the story of the bloody morning of October 6, and the terrible day and the shameful triumph, in words not easy to forget. He

goes on to say that the exalted rank of the personages (the king and queen) and the innocence of their children, he himself "not being illuminated by a single ray of the new-sprung modern light," did not a little add to his sensibility; finally, he ends the story with a magnificent burst of feeling and rhetoric—the famous lament for the queen and for the vanished age of chivalry, which made it possible for such a queen to suffer such indignities.

After this passage, in which he gives the reins to his feelings in pathetic and beautiful words, he suddenly restrains himself, and after his fashion passes from the highest flight of rhetoric into the cool and collected state of mind proper to the political thinker. The vanishing of the age of chivalry gives occasion to show the essence of chivalry, what it had done for mankind and civilisation, and what was likely to be the effect of its disappearance.

The old sentiment and opinions that were perishing in France were due to the ancient chivalry, whose principle had subsisted down "even to the time we live in." It had given its character to modern Europe, distinguishing it from all the States of Asia, and even from those of the ancient world. "Without confounding ranks, it had produced a noble equality," and handed it down through all the gradations of life. It was this opinion "which mitigated kings into companions and raised private men to be the fellows of kings. Without force or opposition, it subdued the fierceness of pride and power; it obliged sovereigns to submit to the soft collar of social esteem, compelled stern authority to submit to elegance, and gave a domination vanquisher of laws to be subdued by manners."

"But now all is to be changed. All the pleasing illusions which made power gentle and obedience liberal, which harmonised the different shades of life, and which by a bland assimilation incorporated into politics the sentiments which beautify and soften private society, are to be dissolved by this new conquering empire of light and reason. All the decent drapery of life is to be rudely torn off; all the superadded ideas furnished from the wardrobe of a moral imagination, which the heart owns and the understanding ratifies as necessary

to cover the defects of our naked shivering nature, and to raise it to dignity in our own estimation, are to be exploded as a ridiculous, absurd, and antiquated fashion."

"On this scheme of things a king is but a man; a queen is but a woman; a woman is but an animal, and an animal not of the highest order. All homage paid to the sex in general as such, and without distinct views, is to be regarded as romance and folly. Regicide and parricide and sacrilege are but fictions of superstition, corrupting jurisprudence by destroying its simplicity. The murder of a king or a queen or a bishop or a father are only common homicide; and if the people are by chance or in any way gainers by it, a sort of homicide much the most pardonable, and into which we ought not to make too severe a scrutiny."

"On the scheme of this barbarous philosophy, which is the offspring of cold hearts and muddy understandings, and which is as void of wisdom as it is of taste and elegance, laws are to be enforced only by their own terrors. In the groves of their academy, at the end of every vista you see nothing but the gallows. . . . Our institutions can never be embodied . . . in persons, so as to create in us love, veneration, admiration, or attachment, which public affections, together with manners, are," as he profoundly remarks, "required sometimes as supplements, sometimes as corrections, always as aids to law." Institutions embodied in persons ought to attach us; the system of manners of a nation ought to give a relish. "To make us love our country our country ought to be lovely."

Take away ancient opinions and rules of life; we have no longer a compass to govern us. Europe certainly was flourishing in the year of the Revolution. How much may have been due to the ancient system of manners it is hard to say, but on the whole their operation was beneficial, he thinks. Our manners, opinions, conversation were traceable to two causes or principles, or rather the result of the two acting conjointly—the spirit of religion and the spirit of chivalry. In the first place, they kept learning in existence, the clergy by profession—it was a part of their function—the nobility by patronage, and this during the din of arms and during the

Dark Ages, "whilst governments were rather in their causes than formed." And learning paid back with usury what she received from the nobility and priesthood, "by enlarging their ideas and furnishing their minds." But now learning, as in France, has grown ambitious, and aspires to be master. But from what was going on in France he prophesies that "along with its natural guardians and protectors learning will be cast into the mire and trodden down under the hoofs of a swinish multitude"—a prophecy that proved all too true during the terrible six years that followed.

Still more, even commerce and trade and manufactures, the gods of our economical politicians (men like Pitt and Shelburne, who believed in Dr. Price), are themselves perhaps but only "creatures," only effects and not "first causes" that we choose to worship. They certainly received encouragement in their infant years from the nobility and clergy, their best patrons and customers. "They grew under the same shade in which learning flourished"; and they, too, may decay with their natural protecting principles. In France, at least, they all appear to be going down together—nobility, clergy, learning, arts, commerce. And what a prospect for a once polished and civilised country, in the front of European civilisation,—a nation of gross, stupid, ferocious, and at the same time of poor and sordid barbarians, destitute of religion, honour, or manly pride, possessing nothing at present and hoping for nothing hereafter—a condition worse than the condition of man in Hobbes' original state of nature, in the new state of nature with which society was menaced!

§ 7

We have here some of the most remarkable of Burke's "reflections," which now, after the lessons of history for a century since Burke wrote, provoke further reflections.

It is true that during the Dark and Middle Ages the clergy "kept learning in existence"; also true to some extent that the nobility patronised it, but only from the later part of the Middle Ages down to the time he was writing. And his

eulogium on the age of chivalry and the feudal system from which it sprang, and the whole system, social and spiritual, of the Middle Ages, is in some respects well deserved. It was a beautiful system, with its ordered, harmonious, social gradations, where command from the superior, carrying with it something of the father's protecting authority and kindness, was promptly met by a generous, willing, and almost grateful obedience on the part of all in the scale beneath; by the love and loyalty which extinguished both envy and fear. And the Church came in beautifully to complete the system, with her comfort and advice in life, her spiritual solace and fortifying rites in the awful hour of death. And learning really was preserved and further cultivated as a pious duty by the best talent of the time that she had carefully gathered into her fold, and withdrawn from the endless din of arms and perpetual turbulence outside the Church and the Monastery. The Middle Age was beautiful as all ages of settled faith and certain hope, as all ages of ordered and accepted social organisation, are beautiful.

Still, if we compared it with our modern and democratic age there are very large discounts to be made. It was a period of perpetual wars, scanty population, rude and unprogressive arts of life, no science, no inventions, barbaric literature, few conveniences or luxuries even for the great.

The Middle Ages passed. The Renaissance came, marking the beginning of the new or modern spirit. The human soul outside the Church suddenly seemed to expand. Men discovered they had minds with mental wants;—the desire for knowledge for its own sake, the wish to taste of its fruit forbidden to the laity. The great schism in the Church —the Reformation—allowed to Protestants the right of private judgment in the interpretation of Scripture; and from these two things—the desire for knowledge and the right of private judgment—arose the spirit of rationalism, of inquiry, of scepticism, of criticism, which has continued and increased ever since, bringing with it infinite good, but which also has shaken the old dogmatic faiths, which has given us the earth with all that it contains—science, inventions, wealth, luxuries, comforts —but which has taken away or greatly changed the old heaven.

Assuredly at the beginning of this period and for long after, the Church, if she favoured learning somewhat, did not patronise either science or philosophy. On the contrary, their votaries were persecuted. The Inquisition and the Stake were terrors in reserve against all who published anything that touched doctrines. Bruno and Vanini were burned, and Galileo had to make his historic recantation. Only in Protestant countries were men of science and philosophers allowed freedom to speculate; even there it was unsafe where the clergy scented heresy. So that the learning they are credited with patronising by Burke did not include philosophy, moral or metaphysical, nor natural theology, nor biblical criticism, nor Roman law, nor at all literature (such as the drama or poetry), but mainly the Latin classics, Aristotle's philosophy, the arid scholastic logic, grammar, and rhetoric, perhaps canon law and the writings of the Fathers.

The nobility in France and in England to a certain extent did patronise letters and the fine arts from the Renaissance onwards, and some even condescended to write poetry, just as Lord Bacon, a lawyer, wrote good prose filled with wisdom. But in Burke's own time how was learning or literature patronised by the Chesterfields of the day? How fared Johnson, or Goldsmith, or Burns? or, in France, Rousseau, Voltaire, or Diderot, the three most eminent contemporary French writers, with the constant prospect before them of banishment or the Bastille if they were not subservient to the king or his ministers, or if their teaching incurred the censure of the Parliament? How in Germany, the land of learning, fared its scholars and philosophers, though in Prussia better treated than elsewhere owing to the liberal mind of the Prussian despot and philosopher, Frederick? It is notorious that throughout the seventeenth and eighteenth centuries, wherever there was no special provision made, no endowment, as in the old universities, learning had an ill time of it, philosophy and science a worse, and literature the worst of all. Happily, however, the latter in some of its more marketable forms was beginning to look to another patron than the nobility, to the many-headed Mæcenas composed of an increasing reading public,

A thing that *ought* to have existed, that once to some extent did actually exist, Burke confounds with the very different reality in his glorified picture of the "Ancien Régime" in France. Had the great Whig nobility of Burke's time really possessed something of the generous soul and tender solicitude for struggling genius which he himself showed in more cases than one, it would have been realised to a considerable degree. In France the great were sufficiently liberal and cultured to admire, to court, and to honour Rousseau and Voltaire. They did little more, and indeed the two illustrious writers were too independent in spirit to solicit patronage or pensions from them or from the Court, which might appear to touch their sense of personal independence or mental freedom. They only wanted freedom, toleration. The Parliament, the Clergy, or the Court persecuted them. There was therefore no reason, but all the contrary, to expect that such men should look with favour on the existing régime, the social and spiritual economy, of civilised Western Europe. Accordingly they were, in general, enemies alike to both, to the old order both in Church and State, and they set themselves to forge the weapons that were to destroy both. The philosophers made the French Revolution, in this sense that without their writings it would either not have come at all, or it would have been extended over a longer period and been far less sweeping, destructive, and bloody than it was.

And in spite of Burke's dark prophetic picture, learning and letters did not perish. They only suffered for a time in common with all other interests. They are now, in the new order of things which dates from the Revolution, far more prosperous than ever they were before it. The ambition that he deprecates, men of letters and learning have in France been able to gratify more than in any other country. They may now aspire both to political power and wealth as well as to spiritual power. Self-help as well as State-help and a larger demand for their productions have done for them that which was never done by the nobility or by the Court in the eighteenth century.

As to trade, commerce, and manufacture, "the gods of our

economical politicians," we know what a prodigious expansion has taken place in them since Burke's day. They doubtless in France suffered for a time; and he was right in believing they were in real danger of vanishing if the reign of chaos had gone on, or could have gone on, in France and elsewhere; for if Jacobinism had conquered and had carried out its destructive principles, as at one time seemed possible, a cessation of commerce and manufactures and a return to barbarism would have followed the establishment of the reign of equality and the confiscations that equality would have implied.

Happily, the Jacobins had not adventured far in that direction till the boldest of them found it necessary to draw back. Even Robespierre, who had coquetted with equality and menaced property in his speech of the 25th April 1793, suddenly retracted, whether from the private monitions of friends, or the re-reading of his Rousseau, or from some transient private vision of the dangerous train of consequences following attacks on private property, it is not easy to say. Certain it is that by the Constitution of 1793, as well as by the civil codes drafted by the Convention, property is pronounced sacred. The Convention certainly confiscated the property of the rich, who showed themselves enemies of the Revolution, and levied great requisitions under cloak of imperious State necessities; but it did not attack property as such, and later, when Babœuf attempted a conspiracy in favour of communism and equality, he was condemned to death by the Jacobin Directory.

Trade, commerce, and manufactures did not perish "with their natural protectors and guardians" (*i.e.* the nobility). On the contrary, they soon flourished more and more. But were the nobility ever really their natural protectors? Not in France. Not in England. Rather the nobility were growing jealous of the trading and manufacturing classes and their increasing wealth, and very unwisely too, as they were soon to share it through their commanding position as monopolisers of the soil, in increased ground-rents and royalties, not to speak of their matrimonial alliances with the plutocracy. And the

manufactures and trade have increased to such an extent as to prove they are not "creatures" as Burke suggests, but causes and "first causes" of wealth and civilisation: to such an extent that it is now capital, the savings of wealth, largely created by the capitalist employers, and not land, that is the first element in production, and the greatest interest in the State.

The world has become largely an industrial world since Burke's time, and the "spirit of nobility and religion" would not now (as he supposes) supply the place of trade and manufactures. The leaders and Captains of Industry have become the natural leaders of the people in the new industrial struggles and competitions; the new aristocracy of wealth, of more importance than the old feudal leaders, for the simple reason that they are more indispensable. They furnish both the guiding brain and the indispensable requisite of capital. The rich noble can also supply capital if he is sufficiently provident, but he does not help to create it by his labour. When Burke wrote, the world was in truth about to change in many ways: there was to be a political revolution, an industrial revolution, a religious revolution,—the first, portentous and alarming beyond all precedent, and attended by a frightful profusion of blood, but beneficent in the sequel; the second, unpopular and disastrous for the working population at the beginning, but in the end beneficial to them and all ranks and callings; while the third, beginning with English philosophy, passing in France into materialism and atheism, evoking by way of answer and reaction the critical philosophy of Germany, has, in conjunction with the application of scientific methods, brought theology into greater harmony with the scientific spirit as well as with the fundamental instincts of our rational and moral nature. All three revolutions have been slow, all of them intimately connected, and none of them completed, though we are nearing their completion and can foresee something like what the final result in each case will be.

§ 8

We have seen Burke's fears that learning, manufactures, trade, and civilisation might perish in France, leaving brutal, atheistic, poverty-stricken barbarians; and that they might be advancing fast and by "the shortest cut to that horrible and disgustful situation."

And England was deeply concerned; for manners in England had always been more or less influenced from France, and he fears they may now be influenced by the evil example. This makes him anxious and may excuse his dwelling so long on "the atrocious spectacle of the 6th of October," from which day he thinks may be dated the most important of all revolutions, "a revolution in sentiments, manners, and moral opinions."

As to the "triumph," not one in a hundred sympathisers with it would be found in England. Once in England we had a French king prisoner; we did not lead him captive in a triumphal procession, but treated him in a far other spirit. And after four centuries the English were not materially changed in that regard. "Thanks to our sullen resistance to innovation, thanks to the cold sluggishness of our national character," we have not yet, like the French nation, been "subtilised into savages" by philosophers. He goes on in a striking passage to speak in the name of the English people, and to describe their national character and sentiments as well as their scorn of the new doctrines in morals and politics: "We are not the converts of Rousseau; we are not the disciples of Voltaire; Helvetius has made no progress amongst us; atheists are not our preachers; madmen are not our lawgivers. We know that we have made no discoveries, and we think that few discoveries are to be made in morality, nor many in the great principles of government, nor in the ideas of liberty, which were understood long before we were born, altogether as well as they will be after the grave has heaped its mould upon our presumption, and the silent tomb shall have imposed its law on our pert loquacity. In England we have not yet been completely embowelled of our natural

entrails; we still feel within us, and we cherish and cultivate, those inbred sentiments which are the faithful guardians, the active monitors of our duty, the true supporters of all liberal and manly morals. We have not yet been drawn and trussed, in order that we may be filled like stuffed birds in a museum with chaff and rags, and paltry blurred shreds of paper about the rights of man. We preserve the whole of our feelings still native and entire, unsophisticated by pedantry and infidelity."

This remarkable paragraph calls for some comment. And first, it is certainly unjust to Rousseau where he says, "Madmen are not our legislators"; for whatever adverse criticism the *Contrat Social* may be open to, the charge of madness is not one of them. Far differently, indeed, the work was regarded by Kant and Fichte, the two profoundest thinkers of the latter part of the century. Then as to the statement, "*We* know that we have made no discoveries, and we think that no discoveries are to be made in morality, nor many in the great principles of government": how can this be true in a century which produced Butler, Hutcheson, Hume, Hartley, Adam Smith, Shaftesbury, and Bentham amongst Englishmen, and Kant on the Continent, two of whom at least would now be regarded by competent judges as discoverers of the first rank and discoverers in morals? His own defective theory of morals shows the need of further discoveries. He says, "We feel within us . . . those inbred sentiments, the faithful guardians, the active monitors of our duty." What is this but saying imperfectly what Hutcheson and Smith have said more accurately and more scientifically? When he speaks of the "active monitors of our duty," what is that but saying what Butler said better when he declared that conscience alone was the active monitor, that the other sentiments and principles leading to action should be corrected and kept in their place, should be instructed, limited, sometimes encouraged, sometimes suppressed?

This doctrine of the supremacy of conscience in the circle of principles of action, and of its threefold nature—intellectual, to discern; magisterial, to command; moral, to urge—is considered by many as a capital discovery. Bentham and Hume

and the utilitarians, true, do not accept the doctrine that an internal principle, like conscience, is an infallible measure and test of right conduct, and they furnish another and external one, namely, the principle of utility. This also has been hailed as a great discovery by another school. However this be, the examples cited should suffice to show that discoveries may be made in morals, if they have not already been made. But Burke is chiefly anxious to disclaim moral teaching founded on natural rights or "rights of man." Hence he hastens to tell us that in England we act rightly because we act from internal promptings which are alone natural. We do not act from a theory of the rights of man which may make us disregard these inner natural feelings and turn us into the brutes or monsters of the 6th of October.

We are living, feeling, human beings, we have bowels of compassion, and we act accordingly. We are not the beings contemplated in their abstract political theory, "embowelled and filled like stuffed birds in a museum with chaff and rags, and paltry blurred shreds of paper about the rights of man"—a happy image indeed from a rhetorical point of view, but not a convincing argument or a true parallel, because theories of morals, as well as of public and private right, can be and have been built on these alleged natural rights.

He is on stronger and safer ground where he says, "We have real hearts of flesh and blood beating in our bosoms. We fear God; we look up with awe to kings; with affection to Parliaments; with duty to magistrates; with reverence to priests; and with respect to nobility." "Why?" he asks. "Because the feelings are *natural*; they arise of themselves, and the opposite feelings shown in France are false and unnatural, and tend to corrupt our minds, to vitiate our primary morals, to render us unfit for a rational liberty; and by teaching us a servile, licentious, and abandoned insolence, to be our low sport for a few holidays, to make us perfectly fit for and justly deserving of slavery for the whole course of our lives."

Then follows his famous defence of prejudice, in notable words that would have delighted his friend Johnson: "You see, sir, that in this enlightened age I am bold enough to confess

that we are generally men of untaught feelings; that instead of casting away all our old prejudices we cherish them to a very considerable degree, and to take more shame to ourselves we cherish them because they are prejudices; and the longer they have lasted, and the more generally they have prevailed, the more we cherish them. We are afraid to put men to live and trade each on his own private stock of reason, because we suspect that this stock in each man is small, and that the individuals would do better to avail themselves of the general bank and capital of nations and of ages. Many of our men of speculation, instead of exploding general prejudices, employ their sagacity to discover the latent wisdom that prevails in them. If they find what they seek (and they seldom fail), they think it more wise to continue the prejudice with the reason involved, than to cast away the coat of prejudice and to leave nothing but the naked reason; because prejudice with its reason has a motive to give action to that reason, and an affection which will give it permanence. Prejudice is of ready application in the emergency; it previously engages the mind in a steady course of wisdom and virtue, and does not leave the man hesitating in the moment of decision, sceptical, puzzled, and unresolved. Prejudice renders a man's virtue his habit, and not a series of disconnected acts. Through just prejudice his duty becomes a part of his nature."

There is surely a great truth expressed here, and very happily too. But it is also a one-sided truth, and requires as its corrective its complementary truth. A prejudice long held, and widely held amongst a people, has nearly always reasons for its existence, whether founded on utility, or necessity, or religious belief, or racial character, or national history. Even where reasons cannot be assigned, the fact of its widespread existence gives it a certain justification. People should not lightly part from their prejudices early imbibed and widely held, and in fact it is not easy for them to do so. They are better than reason for the multitude; they alone, like the uniformity of nature and natural forces, enable us to count on a continuance of moral forces and phenomena amongst a people. If they could get rid of their prejudices easily, their customs, beliefs,

and sentiments, which are closely allied to their prejudices, would just as easily go with them. And if through their prejudices they were not proof against reason, the uncultivated would be at the mercy of every confident sophist whose argument in politics or religion they could not answer. In their prejudices they are perfectly reason-proof, and the most apparently perfect syllogism falls harmless upon them, and leaves them unmoved.

This is good for the uneducated many and even for most educated persons. But surely prejudices may be wrong, may be founded on mistakes, on false science, on selfishness, on unreasonable national or class antipathies, on mistaken theories. If there were no errors in religion, if institutions never survived their usefulness or were never bad, if there was no such thing as progress and improvement, no moving forward to new horizons, then prejudices in favour of wrong religions, bad institutions, old and bad laws, foolish customs, would be altogether defensible and altogether useful; but things being otherwise, prejudice may be the greatest of all bars to progress of every kind.

Where a prejudice is the prompting of nature, it is more invulnerable, and then deserves a better name; where it is founded on necessity or general utility, there is no need of arguing against it. But it should always be able to bear the test of reason as applied by the most competent thinkers and leaders of opinion, and it is to such we look for emancipation from blind and unreasonable prejudices, founded on error and dangerous to the community. In certain departments of speculation, in the pursuit of truth generally, to empty the mind of prejudice, and to bring to bear an unbiassed mind, is the first rule. This is noticed in a remarkable passage by Bacon, an even greater man than Burke, and much greater than the defenders of prejudice, like Dr. Johnson, to whom Burke refers: "Nemo adhuc tanta mentis constantia inventus est, ut decreverit et sibi imposuerit theorias et notiones communes penitus abolere, et intellectum abrasum et æquum ad particularia de integro applicare. Itaque illa ratio humana, quam habemus, ex multa fide, et multo etiam casu nec non ex puerilibus quas primo

hausimus, notionibus, farrago quædam est et congeries. Quod siquis, ætate matura, et sensibus integris, et mente repurgata, se ad experientiam et ad particularia de integro applicet, de eo melius sperandum est."[1]

But it must be allowed that the privilege is only for the elect few. The many must stand by their prejudices till the superior mind appears who may emancipate them from all such as are not founded on reason, utility, nature, or necessity.

Burke contrasts the Englishman's prejudice and conservative spirit with that of the French literary men and politicians, full of conceit in their own wisdom; ready to destroy an old system "because it is old," and to run up in haste a new building careless of its durability; at war with all establishments; as ready to change their government as a fashion of dress. They think there need be no principle of attachment, except a sense of present conveniency, to any constitution of the State. And they fancy a "singular species of compact between them and their magistrates, which binds the magistrates, but which has nothing reciprocal in it," and that the majesty of the people has a right to dissolve it without any reason but its will.

This is the doctrine of the *Contrat Social*, and, in fact, in a certain sense, it is true. In a representative government, if the representatives are to be regarded as agents to speak the wishes of the people, as in a general way they are, though mostly allowed a rather free hand from necessity, there *is* no compact on the side of the people as to the continuation of the constitution or government, and in theory they could change it if a majority refused to return anyone who would not pledge himself to carry out its wishes for change.

It might be said in opposition to this that the people on their side promise to obey their magistrates or the Parliament. They only promise to obey the law because it is their own law, expressing the will of the majority. They obey *themselves*, or rather the majority taken for the whole. They obey their own laws, but they have the power legally to change the form of government, however unlikely it be that they will wish to do it, and, in fact, they will not wish to do it. And

[1] *Novum Organum*, lib. i. § 97.

why? Because of their prejudices. Here Burke shows prescient spirit in his feeling that in these prejudices and "sullen aversion to innovation of the English people," together with their traditional respect for the wisdom of their superiors, and distrust of their own reason, is the social sheet-anchor; prejudices against which reason and logic will waste themselves in vain. And in fact it was largely on the prejudices of the many that the government fell back in the twenty-two years' tremendous war with France against the new version of the rights of man.

§ 9

A "cabal of philosophers," he thinks, have got the glory of producing the Revolution, or rather, as he regards them, a group of atheists and infidels, a sort of men, such as we had in England some years before, that appear and pass and are forgotten. The older English ones are all gone with their writings to the "vaults of all the Capulets," as will soon be their few successors. In France it appears they have banded together and become a faction. It was never so in England. They lived and worked in isolation, "kept the common nature of their kind and were not gregarious." Perhaps in France it would have been well if Diderot, D'Alembert, and Co. had been prevented from acting together as a faction in the State. Such men have had no influence in England, either in forming the original frame of the constitution, or in repairing or improving it, which has all emanated from a certain simplicity of our national character, and "a sort of native plainness and directness of understanding" of our statesmen; a statement which, while containing some truth, requires also some qualification; because, while it is true that political philosophers never acted in combination in England, for a very plain reason, that such men rarely appeared, and usually only one at a time, it is not true that none of them had any influence on the history of the English Constitution; for Hobbes' doctrines had great influence indirectly in maintaining for a long while the authority of the legitimate king, and the doctrine

of non-resistance, as had Locke's, if not in the settlement of the constitution at the Revolution, at least in its defence for long after. Even Burke himself, by this very book in which he denies the influence of such men, delayed for forty years a change in the constitution, which was, however, finally made largely at the instance and through the influence of Bentham and the philosophical Radicals acting in concert. Moreover, by the attempts of such men to create a moral, political, economical, and social science, they are likely in future to exercise a still more considerable influence, if not in changing the constitution, on political practice generally.

At considerable length, and in striking words, he then goes on to show the true conception of the Church and of the State, and of the alleged inseparable relation between them in England. Religion, he affirms, is the "basis of civil society, as well as the source of all good and of all comfort. We believe not merely in religion, but in the Christian religion, which has been our boast and our comfort, and one great source of civilisation amongst us, and amongst many other nations; but if ever we should act like the French, and in a drunken delirium from the hot spirit drawn from out of the alembic of hell, which in France is now so furiously boiling, we should uncover our nakedness by throwing off that Christian religion . . . we are apprehensive that some uncouth, pernicious, and degrading superstition might take place of it, as the mind will not endure a void. Therefore, before disendowing our Church, we desire some other may be presented to us in place of it. Instead of quarrelling with establishments, we prefer them. We have an established Church, established monarchy, established aristocracy, and an established democracy, and we are resolved to keep them each in the degree it exists and no greater."

Our Church establishment is the "first of our prejudices; not a prejudice destitute of reason, but involving in it profound and extensive wisdom. I speak of it first. It is first and last and midst in our minds. For taking ground on that religious system of which we are now in possession, we continue to act on the early received and uniformly continued sense of

mankind. That sense not only, like a wise architect, hath built up the august fabric of States, but, like a provident proprietor, to preserve the structure from profanation and ruin, as a sacred temple purged from all the impurities of fraud and violence, and injustice and tyranny, hath solemnly and for ever consecrated the commonwealth and all that officiates in it."

This consecration of the State is made first, that rulers imbued with the sense of religion should have worthy notions of their function and destination; and religious establishments are provided to continually revive and enforce these high notions of their function and responsibilities. But a religion connected with the State is more necessary where there are free citizens enjoying a portion of political power, that they should be awfully impressed with the idea that it is a sacred trust, and that they are to "account for their conduct in that trust to the one great Master, Author, and Founder of Society." Above all, this is the case where in a democracy they form the collective sovereignty, because in such case they have not the checks that press upon single princes; they cannot be cut off by a rebellion; they live under no responsibility to one of the greatest controlling powers on earth, the sense of fame; as "their own approbation of their own acts looks like general outside favour, passes for fame and good opinion." The sense of infamy is lessened by the number sharing in public acts, however infamous. A perfect democracy is therefore the most shameless thing, having neither shame nor fear to control it. The people at large cannot be punished without absurdity and contradiction, without defeating the end of punishment, which is the conservation of the people in general. All the more reason why they should never imagine that their mere will, any more than that of kings, is the standard of right and wrong. They ought to feel that "they are as little entitled, and far less qualified, with safety to themselves, to use any arbitrary power whatsoever." We must not, therefore, "under a false show of liberty," exercise an unnatural inverted domination, by tyrannically exacting from those who must officiate in the State for them "an abject submission to their

occasional will; extinguishing thereby, in all those who serve them, all moral principle, all sense of dignity, all use of judgment, and all consistency of character, whilst by the very same process they give themselves up a proper, a suitable, but most contemptible prey to the servile ambition of popular sycophants or courtly flatterers."

The weak places, and the besetting sin of democracies, are here admirably shown. And there is no cure for this, he thinks, save religion. Without religion, this "lust of selfish will" cannot be cast out. But under a due sense of religion "in their nomination to office, they will not appoint to the exercise of authority, as to a pitiful job, but as to an holy function; not according to their sordid selfish interest, nor to their wanton caprice, nor to their arbitrary will; but they will confer that power (which any man may well tremble to give or to receive) on those only in whom they may discern that predominant proportion of active virtue and wisdom, taken together and fitted to the charge, such as in the great and inevitable mixed mass of human imperfections and infirmities is to be found."

This also is admirable, and admirable in its allowing for human weakness, of which only the statesman and man of wide knowledge of life, as distinct from the devotee or the theorist, would think. Wisdom and virtue should be chosen, but do not expect the perfection of either. But, on the other hand, is it not perhaps expecting too much from the democracy to suppose they would always act from such high religious feelings? though they certainly should choose the fittest and best, even on the grounds of morality and patriotism, as the best for the nation as a whole, including themselves.

One grand reason why he thinks the State and the laws are consecrated is, lest the existing generation of men, the "temporary possessors and life-renters," should look on themselves as full and absolute owners and masters of the total social estate and mansion, having unchecked power to commit waste on the reversionary estate, "by destroying at their pleasure the whole original fabric of their society, and hazarding to leave to those who come after them a ruin instead of an habitation," and teaching these same successors to repeat the ill

example; by which "unprincipled facility of changing the State as often, and as much, and in as many ways as there are floating fancies or fashions, the whole chain and continuity of the commonwealth would be broken. No one generation could link with the other. Men would become little better than the flies of a summer."

He apprehends that jurisprudence would be neglected, that there would be no certain laws, that property would be insecure, that there would be no stability in the appointment of functionaries, nothing certain to rest upon in training the rising generation for their future careers. "The science of jurisprudence, the pride of the human intellect, which with all its defects, redundancies, and errors, is the collected reason of ages, combining the principles of original justice with the infinite variety of human concerns, as a heap of old exploded errors would be no longer studied. Personal self-sufficiency and arrogance, the certain attendants upon all those who have never experienced a wisdom greater than their own, would usurp the tribunals. Of course, no certain laws establishing invariable ground of hope and fear would keep the actions of men in a certain course or direct them to a certain end. Nothing stable in the modes of holding property or exercising function could form a solid ground on which any parent could speculate in the education of his offspring, or in a choice for their future establishment in the world. No principles would be early worked into the habits. . . . No part of life would retain its acquisitions. Barbarism with regard to science and literature, and unskilfulness with regard to arts and manufactures, would infallibly succeed to the want of a steady education and settled principle; and thus the commonwealth itself would in a few generations crumble away, be disconnected into the dust and powder of individuality, and at length dispersed to all the winds of heaven."

And no doubt this is what would result under the supposed tampering with laws, and especially fundamental ones, such as those relating to property. The conclusion is a rigorous deduction from the principles and assumptions. But before the disastrous consummation, people would discover, and discover

soon, where lay the danger, and avoid it. And this is what in fact happened in France during the five following years. The rulers in France did tamper with property, so far at least as to confiscate without compensation the property of the nobles and clergy; they did change the modes of appointing to functions; they did change many laws, and make new and sometimes strange ones, and society in France got into a terrible pass in consequence, though the people managed somehow to live in it for near ten years, though very badly indeed. As Taine has shown, they did so chiefly because they carried on successful wars, and because they did not venture far in their attack on property. They did not attack the principle. They did not plunder the rich as such, but only those who were enemies of the Revolution. Nevertheless, society became thoroughly disorganised, and when things were looking very hopeless it was discovered that a dictatorship, the absolute rule of one strong man, and a return to the old order, so far as regarded private law, was necessary. Property had merely changed hands from the noble to the peasant cultivator, in whose hands it was confirmed. The science of jurisprudence was again cultivated, and the Code Napoleon, which makes no breach with past principles of law, was the great result.

But according to Burke, to avoid the possibility of rash changes in the laws or the constitution, the State has been *consecrated*, so that none should dream of beginning a reformation by a subversion, but, on the contrary, that reformers should approach the faults of the constitution "as the wounds of a father, with pious awe and trembling solicitude. By which wise prejudice we are taught to look with horror on those children of their country, who are prompt rashly to hack that aged parent in pieces, and put him into the kettle of magicians, in hopes that by their noxious weeds and wild incantations they may regenerate the paternal constitution, and renovate their father's life." There is a certain truth in this, and Hobbes, as we have seen, has applied it, as well as the metaphor here used by Burke, to the actually existing form of government; but still we know that a belief in the general sacredness of a government or constitution must not be turned

into an argument to prevent salutary reform in them, rendered necessary by the general course of social evolution, and the altered relations of classes in the community.

§ 10

Civil society, according to Burke, is a divine institution, and not a human invention. For "without society man could not by any possibility arrive at that perfection of which his nature is capable, nor even make a remote and faint approach to it. He, the Divine Author, gave us our nature to be perfected by our virtue. He must therefore have willed the means of its perfection. He therefore willed the State, and He willed its connection with Himself, the source of all perfection."

We have here the old idea of Cicero,[1] only more clearly and fully stated, the divine origin and nature of society, of the State, and of law which binds society together; which is also substantially the view of Hegel, who sees in law the characteristic product as well as the regulative agency of the State, the "evolution of the Deity," and in the chief political institutions the divine reason, the "Idea" crystallised and objectified.

The State being thus divine, it is fitting men should acknowledge it in their corporate capacity; and in the other institution, the Church, we in effect make "oblation of the State itself" to its great author and source "as a worthy offering on the high altar of universal praise"; and this is duly "performed, as all public acts are performed, in buildings, in music, in decoration, in speech, in the dignity of persons, according to the customs of mankind, taught by their nature; that is, with modest splendour, with unassuming state, with mild majesty and sober pomp."

"For these purposes they appropriate part of the national wealth of the country to the support of the Church. The

[1] From whom Burke quotes: "Quod illi principi et præpotenti Deo qui omnem hunc mundum regit, nihil eorum quæ quidem fiant in terris acceptius quam concilia et cœtus hominum jure sociati quæ civitates appelluntur."

Church is, moreover, the public ornament and consolation, while the poor man finds his importance and dignity in it." A Church establishment is not a mere convenience; the people of England consider it essential to the State and "the foundation of their whole constitution, with which and with every part of which it holds an indissoluble union. Church and State are ideas inseparable in their minds, and scarcely is the one ever mentioned without mentioning the other."

The education of the middle and upper classes is connected with the Church, being almost wholly in the hands of the clergy. The English people will not consent that the clergy should be dependent on the precarious contributions of individuals, nor that it should depend on the Treasury and its exigencies. They will not have them dependent on the Crown, which would constitute a danger to liberty, nor on any other than the Crown for fear of the clergy becoming factious. They will therefore have them wholly independent. They will have an endowed Church and clergy having corporate property "identified with the mass of private property, of which the State is not the proprietor, either for use or dominion, but the guardian only and the regulator."

In two or three remarkable paragraphs, showing deep wisdom and knowledge of human nature, we have his defence of endowments.

"The men of England," he says, "the men, I mean, of light and leading in England whose wisdom (if they have any) is open and direct, would be ashamed, as of a silly and deceitful trick, to profess any religion in name, which by their proceedings they appeared to condemn. If by their conduct (the only language that rarely lies) they seemed to regard the great ruling principle of the moral and the natural world as a mere invention to keep the vulgar in obedience, they apprehend that by such a conduct they would defeat the politic purpose they have in view. They would find it difficult to make others to believe in a system to which they manifestly gave no credit themselves. The Christian statesman of this land would indeed first provide for the *multitude*; because it is the *multitude*; and is therefore, as such, the first object in

the ecclesiastical institution, and in all institutions. They have been taught that the circumstance of the gospel being preached to the poor was one of the great tests of its true mission; they think, therefore, that those do not believe it who do not take care it should be preached to the poor. But as they know that charity is not confined to any one description, but ought to apply itself to all men who have wants, they are not deprived of a due and anxious sensation of pity to the distresses of the miserable great. They are not repelled through a fastidious delicacy, at the stench of their arrogance and presumption, from a medicinal attention to their mental blotches and running sores. They are sensible that religious instruction is of more consequence to them than to any others; from the greatness of the temptation to which they are exposed; from the important consequences that attend their faults; from the contagion of their ill example; from the necessity of bowing down the stubborn neck of their pride and ambition to the yoke of moderation and virtue; from a consideration of the fat stupidity and gross ignorance concerning what imports men most to know which prevails at courts, and at the head of armies, and in senates, as much as at the loom and in the field.

"The English people (the 'men of light and leading' he means) are satisfied that to the great the consolations of religion are as necessary as its instructions. They, too, are among the unhappy. They feel personal pain and domestic sorrow. In these they have no privilege, but are subject to pay their full contingent to the contributions levied on mortality. They want this sovereign balm under their gnawing cares and anxieties, which, being less conversant about the limited wants of animal life, range without limit, and are diversified by infinite combinations in the wild and unbounded regions of imagination. Some charitable dole is wanting to these, our often very unhappy brethren, to fill the gloomy void that reigns in minds that have nothing in earth to hope or fear; something to relieve in the killing languor and overlaboured lassitude of those who have nothing to do; something to excite an appetite to existence in the pallid satiety

which attends on all pleasures which may be bought, where nature is not left to her own process, where even desire is anticipated, and therefore fruition defeated by meditated schemes and contrivances of delight; and no interval, no obstacle, is interposed between the wish and the accomplishment."

These are very true words, and it would require a great poet to express them more beautifully. But let us see their further political application. "The people of England know how little influence the teachers of religion are likely to have with the wealthy and powerful of long standing, and how much less with the newly fortunate; if they appear in a manner no way assorted to those with whom they must associate, and over whom they must even exercise, in some cases, something like authority, what must they think of that body of teachers if they see it in no part above the establishment of their domestic servants? If the poverty were voluntary there might be some difference. Strong instances of self-denial operate powerfully on our minds; and a man who has no wants has obtained great freedom and firmness, and even dignity. But as the mass of any description of men are but men, and their poverty cannot be voluntary, that disrespect which attends upon all lay poverty will not depart from the ecclesiastical. Our provident constitution has therefore taken care that those who are to instruct presumptuous ignorance, those who are to be censors over insolent vice, should neither incur their contempt, nor live upon their alms; nor will it tempt the rich to a neglect of the true medicine of their minds. For these reasons, while we provide first for the poor, and with a parental solicitude, we have not relegated religion, like something we were ashamed to show, to obscure municipalities or rustic villages. No! We will have her to exalt her mitred front in courts and Parliaments; we will have her mixed throughout the whole mass of life, and blended with all the classes of society. The people of England will show to the haughty potentates of the world, and to their talking sophisters, that a free, a generous, an informed nation honours the high magistrates of its Church; that it will not

suffer the insolence of wealth and titles, or any other species of proud pretension, to look down with scorn upon what they look up to with reverence; nor presume to trample on that acquired personal nobility which they intend always to be, and which often is, the fruit, not the reward (for what can be the reward?), of learning, piety, and virtue. They can see, without pain or grudging, an archbishop precede a duke. They can see a bishop of Durham or a bishop of Winchester in possession of ten thousand pounds a year; and cannot conceive why it is in worse hands than estates to the like amount in the hands of this earl or that squire; although it may be true that so many dogs and horses are not kept by the former and fed with the victuals that ought to nourish the children of the people. It is true, the whole Church revenue is not always employed, and to every shilling, in charity; nor perhaps ought it; but something generally is so employed. It is better to cherish virtue and humanity by leaving much to freewill, even with some loss to the object, than to attempt to make men mere machines and instruments of political benevolence. The world on the whole will gain by a liberty without which virtue cannot exist."

He goes on to add: "When once the commonwealth has established the estates of the Church as property, it can consistently hear nothing of the more or the less. Too much and too little are treason against property. What evil can arise from the quantity on any hand, whilst the supreme authority has the full sovereign superintendence over this as over all property to prevent every species of abuse; and whenever it notably deviates, to give it a direction agreeable to the purposes of its institution?"

The first part of this doctrine is true, and well deserves a fuller illustration from Burke's standpoint; the latter, containing his defence of the Church endowments, though expressed in remarkable and impressive words, is questionable. That society is divine is true; it is true that that without which the human race could never have reached its present proud heights must be supposed to have been in the original Purpose of the universe and the Power and Wisdom immanent in it.

Isolation puts insuperable checks and impediments to progress. The savages in single scattered families can get no farther than rude tools, if so much. No arts, sciences, or civilisation is possible without union, association, co-operation. To society, to the State, which is society under government, we owe the arts, sciences, inventions, poetry, philosophy, the electric telegraph, the railroad, the telephone, all of which again help to make society greater or higher. Even abundant subsistence and material goods we owe to it through co-operation. We owe all to society in this sense, that without it they could not have been. And to society we are urged by a principle implanted in us, the principle of sociability. This urges us to the company of our kind, and when we come together, besides the social pleasure, we strengthen each other, call out each other's powers and faculties. We become truly and properly ourselves only in society. This principle of attraction of man to man, and the dormant genius aroused only through it, and especially through association, are not matters of Chance. But society without a government would be a very incoherent and imperfect thing, rather a horde or an aggregation of human atoms than a true society. The seal and mark of a true society, a civil society, is the creation of a government, without which, and law as its authoritative voice, its essential feature, civil society again dissolves. Government is a creation of man, an invention, but under divine direction, because, in addition to being urged by an impulse implanted, it is the one indispensable condition of realising the higher ends of life and of achieving results by human agency, almost as marvellous as the creation of living organisms themselves.

And what now are the ends of society and of the State as conceived by Burke—the two words, though they should be distinguished, being used by him interchangeably? Society is a partnership, an association for all the greater purposes of our being, for the promotion of science, art, virtue. In stately and striking language he says, "It is not a partnership in things subservient only to the gross animal existence of a temporary and perishable nature. It is a partnership in all

science; a partnership in all art; a partnership in every virtue and in all perfection. As the ends of such a partnership cannot be obtained in many generations, it becomes a partnership not only between those who are living, but between those who are living, those who are dead, and those who are to be born."

Society is, indeed, such a partnership; but it may be fairly questioned whether the State, which is not identical with society, has amongst its functions the evolution of all virtue and all perfections, which are often better promoted by its non-interference, and by leaving the care of some of those things to the individuals themselves. The question touched at is the important one of the proper ends of the State and the sphere of government, and the functions it should assume to reach such final ends—a much disputed question in our days. We have seen that Locke reduced them to the protection of property, life, and liberty; while later philosophers are in general inclined to widen them, though there are some, who, like Herbert Spencer and Kant, look forward to the time when the restraints of government and law will be reduced to that minimum which is necessary to secure the greatest freedom to all. But most would agree that the ends of society, the things which a good society ought collectively to realise as distinct from the ends of government, are those somewhat vaguely specified by Burke. They only differ in thinking, —some that the ends would be better reached by government interference and active assistance in taking on itself the care of those larger interests in addition to its strictly necessary functions, others by the government gradually narrowing its sphere and leaving the ends to the voluntary fostering of individuals or associations.

In a later work Burke describes the ends of government differently. "The British State," he says, "pursues the greatest variety of ends . . . the entire circle of human desires, and securing for them their fair enjoyment. Individual feeling, individual interest, and personal liberty, the most lively of these feelings and the most important of these interests in England, has been a direct object of government. On the Continent there

has been no special end aimed at, but various ends according to the varying wants of the people" (*Letters on a Regicide Peace*).

As to his theory of the relation of Church and State and the sacredness and inalienability of Church endowments, it is not one that any English statesman now holds, and it has been abandoned by continental statesmen even in Catholic countries. That the State has moral power to disestablish a Church and at least partially disendow it, is generally accepted; though, if such Church was the Church of the majority and had a strong hold on their sentiments and affections, it might be impossible to do so, and dangerous to attempt it.

§ 11

In what precedes I have tried to lay before the reader all that relates to the science of politics in this once-famed book. In the remainder of the work, which only slightly concerns us, Burke defends the French *noblesse*, the clergy, and the old monarchy; stigmatises the confiscation of the property of the clergy and the monastic institutions as likely to lead to a general shaking of the security of property. His apology for the *Ancien Régime* is able and skilful, showing the man at once versed in affairs and skilled in the wisdom of life.

There might, he allows, have been some abuses in the monarchy, but they could easily have been corrected by a real statesman. The government could not have been so hopelessly bad as to merit only destruction, under which France had prospered; had attained great wealth, had maintained twenty-four millions of population, had so many great and populous cities, such magnificent roads, canals, and means of communication; under which she had distinguished herself in literature, science, and the arts; had produced great captains, statesmen, jurists. Such a government surely merited having its faults corrected, its excellences heightened, and its capacities improved into a British constitution. To conserve the best from the past institutions and to graft on them a principle of improvement is the true art of the statesman. "Every-

thing else is vulgar in the conception, perilous in the execution."

But such a method is very slow, an objector urges. It might take up years. "Without question it might," replies Burke, "and it ought. It is one of the excellences of a method in which time is amongst the assistants, that its operation is slow and in some cases almost imperceptible."

The monastic institutions destroyed in France might easily have been reformed to a useful purpose. We have here a wanton destruction of a natural spontaneous force, even though originally a product of superstition; a crime against humanity, like the attempt to destroy one of nature's forces, such as steam or electricity, which are beneficent agencies if properly directed. In the wealth, the discipline, and the habits of these monastic bodies there was a force that true statesmen could have turned to better account than by making the monks idle pensioners, and realising their revenues by a spendthrift sale.

There follows a long and acute criticism of the new constitution, in which he finds little to praise and much to condemn. But it was urged that under it liberty was restored and assured. To which Burke replies, it is easy to give liberty. "It only requires to let go the reins." To make a government, too, is easy. "Settle the seat of power, teach obedience, and the work is done." But to combine the two things, to form a free government, is far from easy; to duly combine the opposite elements of liberty and restraint requires great ability, which he thinks has not been shown by the National Assembly, or if the members did possess ability it had been of little use to them in their peculiar circumstances, which tempted them to outbid each other as in an auction for popularity. They have thus become the flatterers of the people instead of legislators, and instruments in place of judges. In such circumstances, if one proposes restraints, another will suggest their removal for something "more splendidly popular." The first will then be suspected of infidelity to the cause; moderation comes to be viewed as cowardice, and "compromise the prudence of traitors, until, in hopes of preserving the credit which may enable him to temper and moderate on some occasions, the popular leader is

obliged to become active in propagating doctrines, and establishing powers, that will afterwards defeat any sober purpose at which he ultimately might have aimed"—deep and wise and all too prophetic words, which received literal and terrible fulfilment during the next few years of the Revolution.

But did the Assembly then effect no good? Some they did, because they who destroy all must necessarily remove some grievances; and when they change all, by mere good luck they may introduce something good. But to deserve any credit for the good, it must be shown that there was no other means to it but such a total revolution. And this cannot be shown. Everything good really done was "either in the cession of the king voluntarily made at the meeting of the States or in the concurrent instructions of the orders. . . . The improvements of the National Assembly are superficial, their errors fundamental."

Such is his final estimate of the measures of the Assembly, as to which it is only necessary here to say that historians have since passed a much higher estimate upon them; while as to the Constitution of 1791, which almost died still-born, it is not necessary for our purpose to follow Burke's detailed examination of it.

II. APPEAL FROM THE NEW TO THE OLD WHIGS

§ 1

In the *Appeal from the New to the Old Whigs* Burke is at much pains to defend his political consistency attacked by Fox, Sheridan, and others. It was asserted that in the *Reflections* he had not only belied his past life and political principles, but that he had misread and misrepresented the spirit and principles of the English Revolution of 1688; that the Whig principles as held by Fox and Sheridan, and very similar to the principles animating the French Revolution, were logical developments and lineal descendants of the principles of Locke and Somers, and presumably of Burke's own earlier views. To these charges Burke answers in great detail; the larger part of the book being an attempt to identify his account of the English Revolution with the views of the Whig managers of Dr. Sacheverell's trial in 1711. This part of the book, like the corresponding part of the *Reflections*, is of small value or interest to the student of political science, and for a wonder it is almost tedious. The really valuable part of the book is his criticism of the New Whiggism or English Jacobinism, including in particular the new and leading dogma of the Sovereignty of the People, in which part of the book he has Rousseau's *Contrat Social* in his view, as we may assume in his controversy respecting the English Revolution he had Locke's *Civil Government*, though he does not refer to either by name.

He first lays down the doctrine of the New Whigs as gathered from their best English exponents. He admits having read more of their writings than he can justify on the ground of intrinsic merit. He quotes their contemptuous opinions respect-

ing the Crown, the Constitution, the Aristocracy, the House of Commons, their attack on the law of primogeniture,—"the very condition of an aristocracy," as Burke, thinking only of a landed aristocracy, declares. To none of them will he deign to reply. He merely notes their New Whig principles, presumably the same as those of Fox and his friends. His object is not to refute them, a work which he disdainfully leaves to others.

There is, however, one topic, a central and vital one, in regard to which he asks excuse for dwelling on it beyond his design. This is no other than the doctrine of the SOVEREIGNTY OF THE PEOPLE, and on this important dogma we have important remarks and a criticism much to the point, which in a measure completes his general theory of society and of politics as given in the *Reflections*. At least there is nothing more of equal weight and importance from the scientific point of view, however magnificent and unsurpassed the rhetoric of his thundering philippics in the *Letters on a Regicide Peace*.

"The New Whigs," he says, "held that the sovereignty, whether exercised by one or many, did not only originate *from* the people (a position not denied nor worth denying or assenting to), but that in the people the same sovereignty constantly and inalienably resides.

"The people in forming their commonwealth have by no means parted with their power over it. This is their impregnable citadel when pushed by the battery of laws, usages, and positive conventions. Are we to deny to the majority of the people the right of altering even the whole frame of their society, if such should be their pleasure? They say they may change from a monarchy to a republic to-day, and to-morrow back again. . . .

"They are masters of the commonwealth, because in substance they are the commonwealth. The French Revolution, say they, was the act of the majority of the people; and if the majority of any other people, the people of England for instance, wish to make the same change, they have the same right."

"Just the same," replies Burke, "and that is none at all." For being given any sort of existing constitution "settled upon

some compact, tacit or express," there is no power to alter it except the consent of the parties, that is, in the case of a monarchy (absolute or limited), unless through the consent both of the monarch and the subjects, without a breach of the covenant, that is, a breach of faith and duty and trust. The people, as a whole, are born subject to the covenant, by the fact of being born in the country; the king also, when he ascends the throne and swears to rule according to it. The majority have no right to repudiate their engagements; if they do, they teach their governors to do the like.

"How to tie men by civil constitutions, in the arbitrary exercise of power and by moral instruction in the desire of it, is the difficult problem for true statesmen and legislators and first founders of States. Salutary check and prudent direction of power is not to be expected from the multitude; hence no legislator has ever willingly made the people rulers, because, placed in their hands, power admits of no control, no regulation, no steady direction whatsoever. The people are the natural control *on* authority; but to exercise and to control together is contradictory and impossible."

Make the people sovereign, and he thinks a bad exercise of power cannot be prevented by any check or constitution, so the repression of the *desire* for power is still more difficult. A democracy is the fruitful source of ambition, one of the natural, inbred, incurable distempers of such a government, and the more the more powerful it is.

Our duties to civil society (not the constitution) are not the creatures of our will, though civil society in many cases originally was due to the voluntary acts of men. The *continuance* of the society depends on a PERMANENT standing covenant, co-existing with the society, and it attaches on every individual without any formal act of his own. The moral duties of parents and children are obligatory from the relations themselves, without any consent on their part; in like manner, in the relation of citizens to our country and society, we have duties. These are all compulsory on us, especially if we believe them relations of divine origin.

These are his opinions, from which he concludes that no man

or men have the right to free themselves from the civil obligations and the primary engagement which a man contracts by being born into a community, just as much as he contracts an obligation to his parents by being born of their bodies; the only exception being the case of necessity out of and above all rule. The place, the relation determines the duty.

He allows difficult cases may arise. Duties may cross. Which, then, to obey? One such difficult question was then much discussed. The people having parted with their original power, having discharged themselves of it by a habitual delegation, can no occasion possibly occur which may justify the resumption of it? This he thinks a difficult question, but hardly anything could justify such resumption on the people's part, which would not equally justify a dispensation with any other moral duty, "perhaps with all of them together."[1] But it is not difficult to deduce the dangerous consequences of such a power of resumption. And "the 'practical consequences' of any political tenet go a good way in deciding upon its value." Political questions do not relate to truth or falsehood, but to good or evil. That is true which produces good, false which brings evil.[2]

Regarded from this point of view, that is, considering the consequences of extending or limiting the political power of the people, we should first know what we mean by the PEOPLE.

In the state of rude nature (Rousseau's state of nature) there is no people. The idea of a people is an artificial idea, the idea of a corporation, of an association. It depends on the terms of associating. In a given case (for it was not the same in all cases) it is "collected from the form into which the particular society has been cast." Any other is not *their* agreement or covenant. If men break up the original compact which gives its corporate form to the State, they are no more a people; they

[1] This is fallacious, as moral rules remain even though the people rise against and overthrow their government, as they have done in France four times since Burke wrote, namely, in 1792, 1830, 1848, 1870.

[2] Here we have the test of Hume and Bentham applied; the good or evil that may result.

are vague loose atoms, with all to begin again (as in France). In such a case the majority has no right to bind the rest. The power of so acting must be grounded on two assumptions—first, that all agree to form an association; second, that *all* agree to be bound by the decision of the majority. They might not have so agreed; in some cases more than a mere majority is required for the validity of their corporate acts; sometimes less, sometimes all. It is matter of convention. Decision by a majority is not a law of nature. That a majority shall stand for the whole is "one of the most noted fictions of positive law." The mind more readily accepts one or a few to decide for all than the vote of a victorious majority, because the smaller number *may* be the *stronger force*, and may have all *the reason* against mere impetuous appetite in the majority.

But if men dissolve their civil society any conventional rights of the majority are gone; an individual may remain so. Any number who agree may form a separate and wholly independent state.[1]

In a disbanded society a majority has no rights, so in a civil society its special conventions determine what it is that constitutes the "people"; but neither the original nor any later compact (whether in France or England) has affirmed that a mere majority told by the head is the acting people. And there is just as little of utility or policy as there is of right in the maxim that the will of a mere majority should be law. That men act with the weight and character of a people we must suppose such a state of habitual social discipline and organisation that the wise and more expert and rich conduct, and, by conducting, instruct and protect the weaker, less instructed, and poorer sort. Without this discipline and subordination in the many, men are not in civil society. Given a variety of conditions and circumstances, given a constitution of things from which inequality of conditions result, the wiser and richer for the benefit of the rest should judge and rule.

[1] This is not quite the doctrine of Kant, who says that a recalcitrant individual may be forced into a civil society; or of Hobbes, who says "that if the majority agree to form a society the minority should agree or be justly destroyed."

Then follows Burke's remarkable and interesting theory of a "natural aristocracy," its conditions and varieties, and the several circumstances and causes which originate it:—"To be bred in a place of estimation; to see nothing low and sordid from one's infancy; to be taught to respect oneself; to be habituated to the censorial inspection of the public eye; to look early to public opinion; to stand upon such elevated ground as to be enabled to take a larger view of the widespread and infinitely diversified combinations of men and affairs in a large society; to have leisure to read, to reflect, to converse; to be enabled to draw the court and attention of the wise and learned wherever they are to be found; to be habituated in armies to command and to obey; to be taught to despise danger in the pursuit of honour and duty; to be formed to the greatest degree of vigilance, foresight, and circumspection in a state of things in which no fault is committed with impunity and the slightest mistakes draw on the most ruinous consequences; to be led to a guarded and regulated conduct from a sense that you are considered as an instructor of your fellow-citizens in their highest concerns, and that you act as a reconciler between God and man; to be a professor of high science or of liberal and ingenuous art; to be amongst rich traders who, from their success, are presumed to have sharp and vigorous understandings, and to possess the virtue of diligence, order, constancy, and regularity, and to have cultivated a habitual regard to commutative justice,—these are the circumstances of men that form what I should call a *natural* aristocracy, without which there is no nation."

Burke's idea is that in a civil society such an aristocracy must arise as an essential and integrant part of it, as it always has arisen, except amongst the lowest savages. The state of civil society *necessarily* generates an aristocracy.[1] This is the universal and necessary and therefore the natural order. For the state of civil society is evidently more natural than the state of rude and savage life, the atomistic and incoherent life of the Red Indians or the aboriginals of Australia (which so takes Rousseau's fancy). It is more natural; "for man is by

[1] To fortify this argument an appeal to history is necessary, and tacitly, though not expressly, he is appealing to it.

nature reasonable, and he is never so much in his natural state as when placed where it may be best cultivated and most predominates." Civil society is his natural state (or the state he was designed for by his Creator, as he says elsewhere); but in this state an aristocracy must arise. Further, it is to the advantage of the remaining and larger body that it should exist, as its function is to lead, to guide, to govern for their good. "It is the soul to the body, without which the man does not exist. To give therefore no more importance in the social order to such descriptions of men than that of so many units is a horrible usurpation."

When the many act together under this discipline of nature, act under their natural leaders, then in both together we have THE PEOPLE, something that equals and ought to direct the legal or conventional sovereign. But once break up this beautiful order, this array of truth and nature as well as of habit and prejudice, we have then only a disbanded race of deserters and vagabonds. For a while they may be terrible indeed; but in such a manner as wild beasts are terrible. In the end they have always been subdued, and often in a very sanguinary manner.

§ 2

We have here some of Burke's wisest and weightiest words, and they form his answer to Rousseau's doctrine of the sovereign people and doctrine of equality. Let us consider them, both what they imply and what they omit, a little more fully.

A society, whatever it may have been originally, is not a number of similar and equal atoms, like a flock of sheep or herd of wild animals. They never are or were equal in mental, moral, and physical qualities. Inequality of wealth arises by natural operations, which cannot possibly be prevented, and it is good for the greater number as well as the few. The wiser, richer, braver, or the more capable in war or council should lead and govern the rest for their good, and that the group or society may exist, flourish, hold its own against outside enemies or inside disorder or decay. The multitude are blessed in this natural and divinely ordered rule and

direction. Protection, guidance, and even material goods they gain. They owe cheerful obedience and loyalty to their chiefs. It is a beautiful system; the only truly natural one. But when men break these beneficent bonds, rise in rebellion against them and shout for equality, they indeed are terrible. But it is unnatural, and has always ended in their deserved punishment, and perhaps in their hands being tied for a time to prevent further mischief, and till they learn a better spirit.

Here lies the permanent, the eternal truth. The mass of men must have leaders and governors for their own benefit. All cannot lead, and the multitude, the people cannot govern, owing to physical facts and mental defects. They must have leaders and guides, temporal and spiritual; the ablest, the wisest, the bravest of the former, the most learned, the most virtuous, the best of the latter kind. But they should not be the sort that the French people rose against, mere oppressing landowners and clergy, and exacting taxgatherers, nor quite what they were in England in spite of the glorified and idealised picture Burke has drawn of them. The people should respect their temporal and spiritual leaders, and they will do so if they deserve it. And the government should not oppress its people with heavy and exhausting taxes, in addition to the heavy exactions of feudal superiors, whether nobles or clergy. In such a case the government is not loved, and the nobles and clergy appear rather as robbers than leaders, and as wolves than shepherds.

The state of things in England was not so bad, but far from perfect, when Burke was writing. The landed aristocracy largely ruled the country. There was much corruption in high places and in low places. Moreover, it was a haughty and exclusive aristocracy, jealous of the rising moneyed aristocracy, and with no belief in an aristocracy of merit, save when an occasional Law lord (like Thurlow), or spiritual peer admitted into their ranks, extorted their respect. The fact is, there was at the time two other kinds of aristocracy pushing to assert their natural position in society and to recruit or to strengthen Burke's old aristocracy; rivals at first, but in the end allies, without which the former might have found their position much less

secure in the century that was to follow. And in spite of Burke there is a truth in the dogma of the sovereignty of the people, as well as in the mother doctrine of equality. This truth, as respects the former, we have disengaged, and made it efficacious in our constitution after three revisions (1832, 1867, and 1884). We have solved the perplexing problem of how to give the people, the mass of electors, consisting chiefly of the labouring classes, their due share of political power without producing anarchy. We have given prominence to the democratic side of the constitution, without visible danger to the fundamental institutions of society, which Burke thought impossible, and which perhaps when he was writing was impossible.

How has it been done? By making use of time, the great innovator, by proceeding slowly, by taking only one step at a time and at the seasonable time, by proceeding on the original model and improving it. We have successively widened the suffrage by lessening the qualifications of the electors, as by doing away with the money qualification of members we have widened their range of choice of candidates. We have thereby embraced within the constitution over seven millions of voters. These people, if they cannot directly make laws or lay down a policy, can choose individual representatives, and can to a large extent impose their wish and will on them, supposing their wishes not coincident. If a member disagrees or diverges far from the general will, they can change him and take another, whose will and wish more nearly agrees with their own. They are thus partly sovereign, partly subject to the general will, the will of the majority, in which everyone, as it is a shifting mass, may find himself, as regards some matters. They form in this sense the "political sovereign," as Professor Dicey calls them.

But the House of Commons, embracing their representatives, is likewise sovereign, the legal sovereign, and the real sovereign, because it is the most powerful of the three Estates of the Realm, and the will of the Crown and House of Lords finally concurs with its will if sufficiently manifest, just as it coincides finally with the will of the people. But this will is usually formed for the people, shaped by the will and intelligence of

the wiser, better educated, and even the richer part of the community; and this through the press, the platform address, the speech of party leaders in Parliament, sometimes even by their spiritual guides. The will of the people thus informed and thus persuaded is really guided and governed by the wiser will of the more influential and enlightened classes. And necessarily so: the many cannot think for themselves, and they have only the choice between these classes who are their proper leaders, and demagogues and flatterers who will mislead them for their own ends. They do not in this country much trust to the latter sort, and thus it comes about finally that both the people and their governors exercise their will in legislation; because their wills usually coincide. The people's will is really the will of their superiors, adopted by the people and reflected back as if independently formed. And to shape this will for the people, while pretending to defer to it, by various devices, perfectly fair and even necessary, is the whole mystery and secret of successful popular government. One thing only being borne in mind: that a people's prejudices are to be considered as the part of its will that is constant, that cannot therefore be shaped or controlled, and can hardly be moved by even a leader of the greatest genius. On the contrary, this, like national character and national genius, is the part of the people's will that must be accepted and made the best of, like one of nature's forces; but which, like natural forces, being accepted, may be turned to important and beneficent ends. Here nature, in the shape of unchanging human nature, as in the case of national or race prejudice, traditional religious belief, even class prejudice, is only to be governed or controlled by obeying her. And here the people imposes its will. Here the leaders must follow, and can only control by acceptance.

And as to the doctrine of equality it is clear, too, that there is a very considerable equality of intellectual and moral and physical qualities amongst men by nature. The people of average intelligence, average morality, form the great majority. Give them all the same education and the same dress, and there would be little difference in their conversation, general appearance, or apparent intelligence; and hence it might be inferred

there *should be* a general equality in material goods and endowments, as well as in political functions and powers.

But the argument only applies to the generality, the majority, not to the minority. In every department there are exceptional men though few; these are the natural leaders. The general is better than the common soldier, the inventor than the ordinary artisan, the able man of business than his clerk or "hand"; the judge is the superior man selected amongst his learned brethren, and the bishop the ablest of the clergy.

And there are decisive reasons even against equality of property amongst the majority, who are tolerably equal in intelligence and moral character. There is the absolute impossibility of it, the injustice of it, the poverty it would bring on the majority if attempted to be enforced. All which having been found out by all civilised nations, property and laws of property, recognising inequality of property, have invariably come into existence. The inequality is best defended on grounds of its immense utility, as a spur to industry and enterprise, to the creation of wealth, and because in order to increase it they must part with it to the labourers, and again, because those who own the larger masses of it cannot consume much of it themselves, they must distribute it to others. So that the principle of inequality is good, though, like everything good, it may be abused and carried to extremes, as it was in France before the Revolution.

There is the further defence for the inequality of wealth, that it is quite compatible with a rough equality of happiness. The man with £10,000 a year is not ten times as happy as he who has £1000, perhaps not much happier than he who has £50 a year, though few believe it. Adam Smith and many very wise men honestly and thoroughly believed it,[1] the former carrying it even so far as to say that

[1] Shakespeare also appears to have thoroughly believed in nature's levelling in spite of wealth or pomp or rank. See the remarkable words he puts into the soliloquies of two of his kings, Henry IV. and Henry V. So also Burke himself thinks that the distribution of happiness has no connection with the distribution of rank and wealth. See his remarkable words cited, *supra*, p. 134.

the beggar, who suns himself on the roadside, and who has got rid of the incommodious and illusory sense of dignity, enjoys a happiness the monarch with multiplied appliances has missed. This is one of (mother) nature's strange but happy paradoxes. There is tolerable equality of brain, of bodily powers, and of happiness and misery, the great final consideration; or, admitting some inequality of happiness, the rich and great are more likely to have the lesser share of it. Why then strive for equality of goods which would soon prove insupportable, and which, even within the short time it compulsorily lasted, would soon become equality of poverty?

But in France, from the teaching of Rousseau, and the unjustifiable inequalities that existed, the watchword of "equality" had gone forth; equality of fortune, or nearly so, equality of titles and honours—all to be simple citizens; and accordingly the nobles were stripped of their revenues and titles, and the richest were marked out to be mulcted. Burke saw and dreaded what was coming in France. He did not foresee so clearly what was to be the course and the end of the new rising in favour of equality. He appeals to history.

When the multitude throw off their natural allegiance to their natural chiefs, and by outrage and violence rob and plunder, they are rebels, he says in the *Appeal*, and may as such be fought with and subdued. Such insurrections have been before, the "Jacquerie" in France in the fourteenth century, and the rising of the lower commons in England under Wat Tyler and John Ball. These also preached equality, and, the better to lay hold on the memory, condensed their doctrine into rhyme: "When Adam delved and Eve span, who was then the gentleman?"—the inference being that that primitive good time should be restored. "But," he says, "these poor people were not reasoned but beaten out of their lights." The later theorists never refer to them, first, because the reference would show themselves not to be original but mere copyists; secondly, because the older rebels were unsuccessful.

"But whether successful or not, such risings furnish no argument that a mere majority of heads can alter the seat of power in society in which it ought to obey and not to rule.

As to the power of the whole mass in which the natural aristocracy, or what by convention represents it, acts in its proper place and with its proper weight without being subject to violence, that is a deeper question;[1] but with the concurrence of this true aristocracy no such mischief as happened in France could have place.

Here it is admitted that the whole mass, people and chiefs, might aspire to supreme authority.[2] In the PEOPLE, thus understood, "I acknowledge something that equals and ought always to guide the sovereignty of convention." But is this not to admit that the whole mass, minus the leaders, should have votes or some voice in choosing their leaders, at least in the House of Commons? Secondly, he arbitrarily narrows the aristocracy, excluding the aristocracy of wealth and the aristocracy of ability. His list of leaders should be wider, and the choosers, the voters, should be wider. Burke, however, thought that in England the substantial yeomen and tradesmen formed a good selection, who fairly represented the mass with their wishes and prejudices, and that being a select class they would be less likely to be corrupt. This select suffrage represented the multitude, and the Members of Parliament represented the select suffrage; such was the reasoning. The fact was, in a very corrupt time the Members of Parliament represented the influence and the desires of the Court or of the great families, and their interest, including their pocket, was bound up with one or other of these parties,—a system which might be defended on grounds of fact and history, that it was and had long been so, but which could not be justified by appeals to the original social pact, or on grounds of justice. For men who have no voice in their government are not true citizens; the laws made are not their laws; so

[1] In fact, he contemplated at one time (1770), when he wrote *On the Present Discontent*, resistance to the Crown and Court party on the part of the Whig aristocracy and as many of the people as they could influence. What had occurred in France was a rising of the whole people and middle class and a part of this aristocracy, but as it was a rising largely against aristocratic abuses it would be absurd to expect the aristocracy to be at the head of the movement.

[2] See also *supra*, p. 148.

far as political rights are concerned they are ciphers. But give votes to all adult males except paupers, and then it would follow that the majority has the political right to change the government at pleasure, provided a majority agree to do so and are resolute, however unlikely it is that such will be the case.

Burke, however, would test the principle of the right of mere numerical majorities to change the government at pleasure by its consequences. And here he adopts, as he frequently does, the new method of Hume and Bentham, which brings all laws and institutions, forms of government, and political principles to the test of UTILITY. If, he says, a majority can change the government as it pleases, any one person has the right to originate the idea of a change—the thing that Hobbes regarded with abhorrence and would prevent by penalties. Such a one must begin by a secret conspiracy (unless the utmost freedom of discussion is allowed on the constitution and the measures of those who control its working). And thus we should have a series of conspiracies and seditions, sometimes ruinous to their authors and always noxious to the State.

But the real reply comes from another quarter: that though the majority of voters in England have the legal power of changing the constitution if they acted irrespective of their leaders, they are not likely to wish largely to change what works well. They will only change slowly, and they are very unlikely to wish for a change not agreeable to their social chiefs and superiors, to whom they are willing to leave all initiative. For their own good they desire to follow their leaders and not to combine together for political action without them, save with reference to questions of wages and work.

The right of the sovereign people to do what it pleases it now has; it is perhaps a dangerous right. The one safeguard is that the will of the people is to be discovered in the more enlightened will of the natural aristocracy; that their will more and more coincides with that of the Members of Parliament, and that where it does not altogether coincide, as

on labour legislation, impartial and enlightened third persons may find a *via media* acceptable to both. The people are not likely to desire further change in the constitution, the claims of democracy having been fully conceded. They are not likely to wish to attack property, though they may desire some revision in some of the laws of property and contract, and some special legislation affecting their own interest, where existing laws are unjust or unfavourable to it.

§ 3

The remainder of the book is devoted to sounding an alarm, and to a rapture on the hidden marvels and beauties of the then British constitution, on which the New Whigs, who spoke very contemptuously of it, would lay irreverent hands. There is danger, he thinks, to the constitution and to society, not from the ability of the writings of these English Jacobins, but from their restless energy and their fanaticism in the new faith of the rights of man. The discontent which they manifest—not from any real grievance, but from their admiration of a particular form of government—is all the more formidable. But their writings, he complains, are not condemned, while his book is. There is real and great danger, and all the greater because they praise the worst things in the Revolution, and what they praise they would realise in England if they got the opportunity. They are wild in their ideas, certainly; but men with the wildest ideas have done the greatest mischief, and they are the fittest beginners of all great changes. The danger from them may be distant, but they will get their chance, because discontents may arise under the best of governments. When such a time comes the dangerous principles now sown will shoot up in full luxuriance; then will be seen the effect of their pernicious teaching of contempt for the British constitution, and for all old institutions, as results of ignorance or worse; their teaching that all prescriptive governments are of the nature of usurpations (that is, government that rests its defence on the fact of long continuance); then will appear the effects of presumptuous indocility in matters of political theory,

the danger of separating religion from the State, and of teaching that we are under no moral obligation to our established government.

Nor will it suffice to say that the great number of men of great hereditary estates and influence will prevent the levelling that has taken place in France. It may, on one condition; if they get alarmed in time; otherwise their great properties will be the cause of their danger. Instead of conferring power and influence on their possessors they will excite rapacity, as in France. Besides, rich and turbulent men (like the Duke of Orleans in France), through ambition or resentment, may adopt the new doctrines and ideas; and persons of wealth in insecure times will go to the supposed winning side, as a matter of calculation. The influence of two such men as Mr. Pitt and Mr. Fox could frown such dangerous political opinions out of the kingdom or drive them underground.

Then follows his eulogium on the British constitution as it then stood, fortified by a testimonial in its favour from Montesquieu, who, however, derived his knowledge, as Gneist tells us, more from party pamphlets than from a study of it himself or knowledge of the actual forces, often corrupt, by which it was worked in practice. The fact was, Burke saw a danger to his superstitiously beloved British constitution, under which the great noble families and landed gentry ruled England. He apprehended danger to their properties if this constitution was tampered with in a democratic direction. It was no longer dread of a change which would increase the influence of the Crown; it was a reform that would increase the power of the people and the rich classes outside the landed gentry that he feared, and he thought that any change might go too far and involve attacks on landed property; and probably it would have been an inopportune time for parliamentary reform. But it was hardly yet time to interfere with freedom of speech and discussion on political matters or with the propagation of opinions in favour of a reform in the constitution, for the reforming party in England was not numerous. The ruling classes were very strongly

entrenched, the farmers and agricultural labourers, the backbone of the country, were conservative and contented. It was rather in Ireland and Scotland that discontent existed. And when real discontent arose again thirty years later, the danger which he signalled did not arise. The constitution was reformed by later Whigs and Radicals, and landed property was in so little danger that a Conservative government was within a few years again in power even under a reformed Parliament.

§ 4

When Burke wrote the *Reflections* he was imperfectly acquainted with the causes, nature, and tendencies of the Revolution. As the astounding drama unfolded itself act after act, he began to take a more accurate estimate of it, but without fully comprehending it even to the end of his life. And no wonder, considering the contrary estimates and contrary interpretations of it, even down to our own days. At first he is disposed to class it with seemingly similar phenomena of history; with the Anabaptist terror of the sixteenth century in Germany; with the levelling movement of the time of the Commonwealth; then in *The Appeal from the New to the Old Whigs* with the French "Jacquerie" of the fourteenth and fifteenth centuries, and the rising of the lower commons in England under Wat Tyler and Father John Ball. These, however, had all been suppressed in blood, and he anticipated at first a similar ending of the new French rebellion.

But at the end of the same year (December 1791), in his *Thoughts on French Affairs*, he began to perceive that the Revolution was different from all previous risings, rebellions, and revolutions, in that it was a revolution of doctrine and theoretic dogma, and so far akin rather to the Reformation than to other political revolutions. And, like the Reformation, it had in every civilised country an enthusiastic party in sympathy with its dogmas—people who ardently desired its success in France, and who looked forward to the success of the like system in their own country.

He repeats the fundamental dogma or principle, namely, that "the majority, told by the head of the taxable people in any country, is the perpetual, natural, unceasing, and indefeasible sovereign; that this majority is perfectly master of the form as well as the administration of the State, and that the magistrates under whatever names they are called are only functionaries to obey the orders (general as laws, or particular as decrees) which that majority may make; that this is the only natural government, and that all others are tyranny and usurpation"; and this is certainly as clear and accurate a statement of the essence of the doctrine of the sovereign people as he anywhere gives.

There follows an interesting list of the English sympathisers, which he says embraced "most of the dissenters of the three leading denominations, besides all dissenters in character, temper, and disposition,—that is, all the restless people of all ranks and parties, Whigs and even Tories; the whole race of half-bred speculators; all the atheists, deists, and Socinians; all who hate the clergy and envy the nobility; a good many among the moneyed people; the East Indians almost to a man, because they are grieved that their present importance does not bear a proportion to their wealth."

The Revolution had taught many things,—in other words, had shown that it was a new thing in many ways; amongst others that the "hitherto peaceable and even timid part of society"—the moneyed men, merchants, tradesmen, and men of letters—may subvert a government, such having been the leading actors in the drama of the Revolution; and the reason assigned is that as wealth increases and circulates, and news and letters become more diffused, those who diffuse the money and the intelligence become more and more important, that is to say, the moneyed man and the journalist (as by 'men of letters' he here chiefly means the journalists, though elsewhere he includes in the elastic term those now distinguished as men of science, like Bailly and Priestley, also philosophers like Rousseau, Voltaire, and Condorcet). To those classes the Revolution offered for the first time a career of ambition—all places in the State, in the army, in the system of civil offices of every kind; in fact,

a "bribe great beyond example in the history of the world was held out to them—the whole government of a very great kingdom."

Nor let it be supposed the same might not occur in England; because merchants and manufacturers enjoyed higher social consideration in England. In a country like England "wealth new in the making, and precarious in its tenure, can never rank first, or even near the first. . . . At no period in the history of England have so few peers been taken out of trade, or from families newly created by commerce. In no period has so small a number of noble families entered into the counting-house."

He concludes: "That envy and ambition may be by art and management and disposition as much excited amongst these descriptions of men in England as in any other country; and that they are just as capable of acting a part in any great change." These are significant words, which give rise to some reflections.

If the rising rich class in England was ambitious of more political and social influence, nothing could be more natural, as wealth had always been, especially in commercial countries, one of the causes of aristocracy, and England was becoming more and more a commercial as well as a manufacturing country, as Burke knew. That these classes were discontented pointed to a grievance, and the moral that we should rather have expected would have been the advisability of removing the grievance by an improvement in the constitution than urging on a war with France for fear her example should spread to England, especially when in France this important class had still less power than in England. But this his belief in the perfection of the English constitution forbade. It is, however, a remarkable thing that the classes here referred to by Burke, though greatly increased in numbers and riches, were the very classes who were the leaders in the Reform Bill agitation, and were the means of bringing about, forty years later, that revolution in our constitution which both widened the suffrage and made themselves the chief power in Parliament.

It is also very remarkable that this very class referred to by Burke is now, and for a considerable time has been, the most powerful and important class of all. It has been increasing in influence, while Burke's favoured class, the permanent landed gentry, have been comparatively losing influence, and in France they have lost it altogether. Nor is this great aristocracy of wealth by any means revolutionary either in England or France. In France they form, in fact, the select of the *Bourgeois*, against whom the advanced section of the working classes and the Socialists have declared war, but whose position as the savers and accumulators and controllers of capital, and the finders of employment and wages for labourers, and the skilled and intelligent directors of their labour, is really the most secure in modern society, because they are more necessary than any other class.

The dissatisfaction of the aspiring middle class excluded from all political power was one of the great causes of the Revolution. It had no political power; as a consequence it had small social consideration, and the like was true, though to a much less degree, of the same class in England. It was true of all civilised countries, except the youngest, the United States. It was no wonder, then, that this growing class of rich men, great employers, rich merchants, opulent tradesmen, should be dissatisfied everywhere with the governments which excluded them, and in sympathy more or less with the principles of the Revolution. In France, such men sympathised with the principles at the beginning, and until they were marked out for spoliation equally with the nobility and the clergy, by the dogma of equality and the sovereignty of the people applied in practice, and by the words of leading revolutionists like St. Just and Robespierre, after which they merely looked for a government that would maintain order and protect property.

Later on, in *Letters on a Regicide Peace*, Burke refers to what was perhaps the deepest of all the causes of the Revolution, when he describes "Jacobinism" as "the revolt of the enterprising talents of a country against its property." This is an exaggerated and inaccurate statement of a deep truth. The

discontent of talent, kept back by poverty, and afforded no career, was, if not one of the main causes of the outbreak, at least one of the principal causes of the rapid violence of its course, and of its success in France, as well as of the extraordinary success of the French arms abroad. Danton, the ablest statesman, and the chief planner and actor in the great critical days of the Revolution, was a poor and struggling advocate when the Revolution broke out. Vergniaud, the leader of the Girondins and the founder of the Republic, was in like manner a lawyer of limited means. Hoche, the greatest military genius next to Bonaparte, was a sergeant in the old army, and could aspire no higher. The like was true of Pichegru and Jourdan, two other great generals of the Revolution. Even Bonaparte himself, in ordinary times, would have remained a poor officer of subordinate rank. Danton and Hoche, and many more of this natural aristocracy and latent men of genius, threw themselves with ardour into the Revolution. They speedily became leaders. As such, they employed their abilities, and to some purpose. The internal revolution, and its anomalous and audacious course, was determined by such men,—above all, by Danton, a veritable king, as Taine calls him. In the critical days on the frontiers such men conquered the Austrian, the Prussian, and the English generals. The soldiers had the revolutionary enthusiasm, and the generals genius and youthful audacity. It was discovered that, outside the hereditary aristocracy, in the ranks of the people there were the ablest military leaders, so that there was no longer any function reserved for the old Noblesse, for which they were pre-eminently fitted. The exclusion of talent from careers, or rather the want of any provision for it, was the fatal policy of the old régime,[1] for which it paid very heavily. It was a just

[1] Danton himself had noted it. It was a great mistake, he said, for the *Ancien Régime* to provide men like himself with a liberal education by means of exhibitions, without going further. "La révolution est arrivée; moi et tous ceux qui me ressemblaient, nous nous y sommes jetés. L'ancien régime nous y a forces en nous faisant bien élever, sans ouvrier débouché à nos talents" (Taine, *La Révolution*, vol. ii. p. 36).

cause of smothered but widespread indignation and heart-burning, a grievance of first magnitude, from which many great and aspiring spirits had suffered, including even the prophet of the Revolution and the preacher of equality, Rousseau himself, who had fully felt the pangs that impoverished genius has to suffer. Most of the new class of journalists and men of letters were afflicted in this way; and it is not wonderful that they also eagerly took up the principles of the Revolution.

In France there was not merely the injustice of ability in the many denied opportunity, but there was sometimes a cold and uncertain patronage of literary ability, the only kind that got any sort of recognition, more frequently neglect, or a condescending and insolent patronage, such as Dr. Johnson resented in Lord Chesterfield. In short, ability, which should have a sure provision in a healthy society, and which now has it in great measure, both because it has found its market and conquered a field for itself, or because society and the State has aimed at rewarding it better than at the time of the Revolution, was in the worst possible position, worse almost than in the feudal or in barbarian times, where at least ability was in demand for the military service or for the Church. It is not then quite accurate to say, as Burke does, that talent rose against property[1] at the Revolution, but it undoubtedly favoured the Revolution, which promised opportunities to its natural ambition; and especially was this the case when the new order of things was put on a firmer basis by Napoleon, the prodigious child of the Revolution, who favoured all ability except that of the literary and philosophic sort.

Burke was right in concluding that the principles of the Revolution were infectious, and of universal application wherever like social circumstances existed. Oppressed peasants, an aspiring middle class, ability without outlook, all lovers of liberty were everywhere in sympathy with it, and everywhere presumably would make similar changes if they were able. To the classes named there must be added, in the case of

[1] The St. Simonians expressed it better: the Revolution, they said, was the rising of Talent against hereditary usurpation and Privilege.

France, the lowest class of all, but a very formidable one in revolutionary times, especially if a reckless government, determined to win at all hazards, deliberately places arms in its hands—the class of the most reckless and desperate poor; the "social residuum," or *sansculottes*, composed, in addition to the ordinary poor, of brigands and semi-brigands, loafers, vagabonds, broken men, social deserters, discharged criminals and convicts; in short, the most irresponsible and dangerous class, ready for any work or atrocities; and such men, whether urged by designing men or by genuine fanatics, committed all the excesses of the Revolution, as they took a foremost part in all the decisive days.[1]

The danger menaced every country, but England perhaps less than any other, because the ruling classes were strongly entrenched, the farming and agricultural classes were well affected, and the people generally not heavily taxed, while the lower poor were even liberally treated by a very indulgent Poor Law. The discontented did not, on Burke's highest estimate, amount to one-fifth of the people. Burke, however, thought the danger great for England. What was his plan for dealing with it? To make war on France, or rather on the revolutionary government of France, for the purpose of restoring by force the old régime: the king to his legitimate authority; the nobility to their individual property; the clergy to their corporate property—in fact, something like what took place in the end, but not till after the most extraordinary things had occurred, the establishment of democracy, and the sovereignty of the people, the tyranny of the Reign of Terror, the wonderful victories of the Republican armies, the still more wonderful conquests and marvellous career of Napoleon,—a series of events without a parallel, all of which would have been different if England had not engaged in the war, almost, one might say, if Burke had not broken from his party, joined the Tories, and preached a passionate crusade against the Revolution. Why might not England with safety have maintained neutrality, as Pitt desired? Because, according to Burke, the danger was that the Jacobin principles would spread in

[1] Taine gives ample proof on this point.

England by "a sort of dry rot."[1] Only war, offensive and defensive, with France, together with the repression of Jacobins at home, could be effective. War would unite the people, would tend to silence the Revolution sympathisers, intercourse with France would cease, and repression would do the rest. He concludes: "I have done with this subject, I believe for ever. It has given me many anxious moments for the last two years." But he adds the remarkable words indicative of a momentary doubt and misgiving as to the policy he recommends :—

"If a great change is to be made in human affairs, the minds of men will be fitted to it; the general opinions and feelings will draw that way. Every fear and every hope will forward it; and then they who persist in opposing this mighty current in human affairs will appear rather to resist the decrees of Providence itself than the mere designs of men." This is true, though it is opposed in spirit to his proposal to stop any change by a foreign war, forcible domestic repression of opinion, and by opposition to all constitutional reform. There was a great change to be made in human affairs. The French Revolution was the beginning of that change in France. It was a tremendous attempt to bring about this great change in too short a time. It aimed at introducing liberty instead of the despotism of one, and it at first quickly succeeded, though, owing to the excesses of the multitude, the liberty was soon lost. It attempted to bring in democracy and the sovereignty of the people, in which it succeeded only for a day, because the *direct* sovereignty of the people is a chimera and an impracticability. It aimed at greater equality, not merely political but social, at a greater equalisation of material fortunes; and to a certain extent it succeeded. The nobility lost their feudal dues and never recovered them. The people got the land freed from a multitude of taxes; but when the revolutionary government went further, threatened to plunder the rich, and raised for a day a *sansculottes* despotism based on spoliation, it soon found it had entered on a fatal road, in which it was destined to be destroyed.

[1] He further says in 1794: "I was convinced that war was the only possible chance of saving Europe, and England as included in Europe, from a truly frightful revolution."

§ 5

And now to pronounce a final opinion on Burke's theory of things. What do we find in sum? A system of opinions that rejects the possibility of discovery in moral or political philosophy; that forbids honest inquiry on religious questions that might appear to lead further than its own conclusions; a mental temperament that would make a difference of speculative dogma in religion or politics a ground of a prolonged war with a neighbouring nation; and one that is even out of sympathy with the new economical doctrines and the great new developments in manufactures and trade, "the new economical gods of our worship," as Burke styles them, not suspecting the vast possibilities for good that lay in the new inventions and machinery and the consequent expanding industries, although Pitt had caught a prophetic glimpse of it. We find a system of politics that rests property mainly on prescription, whatever injustices and abuses may be connected with it, as in the case of the feudal burdens and dues in France; that rests government as well as property on prescription, and that accordingly approves of an irresponsible and corrupt oligarchy governing England, until the French Revolution breaks out, and then is reconcilable with something worse—something very near to the corrupt and tyrannical despotism which he had passionately denounced some twenty years before; we find a view of morals that rests right conduct on opinions, manners, habits, as external objective guides, or else on prejudice and mere strong feeling as internal instructors, instead of on conscience, reason, or utility.

This stamp of mind that dislikes all change, at the Reformation would have condemned it, and would have been on the side of Philip II.; at the rise of Christianity with the persecuting Emperors. Accordingly Burke not only hated the Revolution, but despised the new moral philosophy springing up in England, one of the most remarkable intellectual movements in our history; he knew nothing of the great new philosophy springing up in Germany, including a philosophy of politics more deeply based than his own; and he despised and

detested the new political philosophy that had arisen in France, although it was a speculative development of the philosophy of Locke, which contains the principles of Burke's earlier political creed—a circumstance which made it extremely difficult for him to answer the new theory in the *Appeal from the New to the Old Whigs.*

In every direction he was a reactionary or rather a conservative, in full and entire sympathy with things as they are, with no belief in and no sympathy with progress, the chief thing for which the human species was made, and the capacity for which in all directions is the sole thing great or hopeful about it. In fact, he finds his ideal rather in the past than the future. We see with him in all cases the fond backward glance on an imaginary past, never the forward hopeful one; a yearning for an idealised and vanished age of chivalry, never the belief in or the wish for the more glorious future which was coming, which Condorcet and many of his contemporaries hailed from afar, and the hope of which sustained them in the hour of death.

And yet such a spirit as Burke's has likewise its uses, though of the negative order. It forces us to reflect on the great value of our actual and realised conquests; on society, that "great partnership in all perfections," together with all its blessings—arts, learning, settled orderly government, security of property and person; compels us to prize them and not to lightly hazard them—the substantial goods for shadows, or the proved chimeras and impracticable ideals of mere social theorists, charlatans, or self-seeking demagogues.

Both the progressive and conservative types of mind are necessary for assured gains, but which is the more necessary the history of our species and the history of civilisation has answered in the most decisive manner.

It is true, Burke would "improve" in practical politics, but within very narrow limits; in religion and morals and political science he does not even believe that any further truth is to be found. We are in possession of truth. It is a question, as with the British constitution, not of pursuit but of enjoyment. "It is good for us to be here," as he says, just where we are,

and this at a time when the first chapter of a new and glorious revelation of truth, religious and moral, had already been written in the German critical philosophy, and the further chapters of which the progress of science and criticism in our century has almost enabled us to complete; but a revelation which would never have been vouchsafed to those who think that they already hold truth as a finished conquest and in full acquisition; or who do not know that the clearing of the searching eye for truth, the widening of the perceptions and intuitions of beauty, the finer feeling for justice and the sentiments necessary to carry it out, even the discoveries, inventions, and conquests in the material sphere, are all connected in the great forward ages of humanity, and that it is dangerous and almost a crime against humanity to repress or check the movements of the mind in any forward and hopeful direction.

The French Revolution did not fundamentally change Burke's character or turn his brain, as Buckle suggests; but it alarmed and shook his nature, drove him out of his former better self, and distorted his perceptions. It troubled him beyond measure, with his alarmist and excitable temperament, and with a teeming imagination ready to give his alarms a vivid shape. Through it he saw a dearly-loved world, an old and cherished order, the only conceivable, the only desirable one for him, threatened with utter destruction by the most horrible, monstrous, and portentous birth of time, a savage insurrection of the ferocious rabble led on by visionary fanatics or scoundrels; and he saw the incredible thing take place, the thing without a parallel in history succeed. Here surely was something transcending all natural laws, all experience—a sort of miracle — and this is indeed a thing to trouble the mind; and as the portent continually took some new and horrible shape, it threatened to "confound his sovereignty of reason."

The monstrous, foul, incredible thing he had lived to see triumphing: no wonder it gave him, above all men, a shock, which increased till it became an incubus he could hardly ever shake off. Was the Revolution a thing from hell, the unloosening of Satan prophesied in the Apocalypse for a thousand

years? All too like it appeared to his affrighted vision in 1796, after its murderous success at home and its victories abroad. It was now in the seventh year of a triumphant course of crime. Hence his undying, almost frenzied, hostility to it. Hence the peculiar mixture of awe and fear and hatred of it in the *Letters on a Regicide Peace* and his *Letter to a Noble Lord*, in which he calls it the "mother of all abominations."

We have the advantage over him of knowing more of its true nature, causes, course, and consequences. He died in the hour of its greatest triumph; but, convinced of its being the last of evils, he struggled against it with superhuman energy, and he died defying and cursing it; not, however, till he had inflicted a mortal wound on the immediate and passing phase of the portent—the Directory. For this body was resolved to continue the war with England, the thing that Burke of all things desired. It left Pitt no choice, and despair turned England at bay. It was then that Burke's scathing philippics did their work and roused England. A new and more formidable coalition was formed, and the tide of war turned against France. The corrupt Directory was dissolved by one of its own generals, and the Revolution in one of its evil forms was finished.

Burke nursed and roused the warlike spirit of England to contend successfully with France. He did not conquer the Revolution. Its spirit rose again. It was not a thing to be put down by cannon, though the consequences of its principles might be postponed. What there was in it of good, the immortal part, was invulnerable as a spirit; and this part, the real essence of the Revolution, was destined to rise again, to live, and prevail.

For the essence of the French Revolution was not that startling series of dramatic and terrible acts that held Europe spellbound for years, with all eyes turned to Paris;—the series of surprises turning on the accidents of men and circumstances, on whether Danton could come to terms with the Girondins; on the peculiar character and temperament of Robespierre, a mixture of timidity, vanity, and fanaticism, which

made him in the midst of danger cruel and remorseless as death, and a chief agent of the torrents of blood that flowed during the Terror. That something startling and likely to have come in any case was still more likely when the new legislative assembly met,—a collision between the king and Assembly, for the new constitution left room for a quarrel. The Assembly had too much power for any kind of monarch, as Burke had pointed out, and "for a Republic there was a king too much." Therefore a collision was nearly certain. The Girondins, who were Republicans, beat the Constitutionalists. The king exercised his veto. The people were called in, as in the theory of the *Contrat Social* the majority of them had the inalienable right to decide, as they had even in Locke's theory of government; and so there came the 10th of August and the storming of the Tuilleries.

The principles that underlay the Revolution might have taken this or that temporary incarnation, whether in laws or constitutions, might have been put in practice by this group or that for a time; they were bound to work out in the total and in the end, as they have worked out, into greater political power and social consideration for the people, and even a greater share in the distribution of wealth; into greater political and even governing power for the middle classes, the aim of the Girondins early seen as the goal; into greater scope for ability as the result of its revolt against exclusive privilege.

These were the main things that the Revolution originally aimed at. These things it has finally realised. Doubtless, more things were contained in its principles; but whether they also will be realised is in the womb of the future, for the Revolution, at least in France, is not yet finished.

§ 6

At the hour Burke was writing his scheme of things, the outlines of a different, of a new and greater world were laid down by the Purpose of the Universe, and the final source of progress; of new science prompting to new discoveries and

inventions that would revolutionise and vastly increase the mastery of man over nature; that would change and improve social life, multiply comforts, and minimise poverty and misery; new sentiments stirring in the brains of men wholly alien to the old sentiments of traditional loyalty and feudal feelings; sentiments intensified by the innate dignity of the individual man, first let loose at the Reformation; desire for freedom and independence; love for nature and for simple unconventional life according to nature; new ideas also of religion displacing the indifferent and somnolent theology of the earlier half of the century, and more true, because resting on the rock of reason, itself a revelation, and on universal, ineffaceable intuitions; finally, a new morality and a new view of government following this general illumination of the human spirit.

The total result is that we are now, a hundred years after the Revolution, more separated from the England of 1760 (the time of Burke's entrance into public life) than it was from the England of the Wars of the Roses; in sentiments, manners, opinions,—all those things which Burke insists upon as of so much importance in relation to law and morality. We *cannot* now feel as he felt. Only a person of peculiar powers like the poet or historical romancist, only a Scott, can so feel, and not many of such, for the actual life was far other than the idealised one. Moreover, there came with the New Age a great burst of poetic genius heralding its dawn, itself alone a rare and remarkable phenomenon, and a further proof that a new world was coming; remarkable, too, in that Burns, Byron, and Shelley, even Coleridge, Wordsworth, and Southey, at first, were all in sympathy with the new spirit and the French Revolution, with the as yet unrealised but beautiful ideal that hung floating in the clouds. They were weary of the actual, and across the accidental and temporary horrors in France the poets saw the great principles that were striving to become realised and which were the essence of the Revolution. They made abstraction from the aberrations, accidents, or fatalities of the hour, which did not impugn the greater good they expected from it.

And so it happened that the revolutionary spirit had in

sympathy with it, the discontented poor, the discontented rich, discontented ability, the philosophers, and lastly, the poets; a vast and august confederacy, all the better elements, if not the greater numbers of a nation, a company that nothing could resist.

And this not alone in France but in other civilised countries. In vain, then, save to hold the principles back for a time until it would be safer to give them free scope, the twenty-two years' war. In vain the repression in England. The cause had conquered almost before the last cannon-shot was fired that was meant to extinguish it. And the small but rapidly increasing band of reformers, after the peace, had only to go on with an ever-swelling tide and increasing numbers to victory.

The Revolution came to England; but it took a very different course from what it did in France. It is not marked by "Revolution days" (July 14, or August 10). There was no sensational capture of Bastilles to usher it. There were only great demonstrations at which resolutions were passed. But it was found the people were resolute, and their leaders were resolute; and amongst these a nephew of the Duke of Bedford (so severely satirised by Burke), true to the traditions of his noble house, Lord John Russell was in the front, and led the movement to final victory.

The Bill was carried, and the "sacred" constitution was reformed, rotten boroughs disfranchised, large new boroughs were created with the improved instrument and with the new infused blood. A most important series of Liberal reforms were carried out, but with no desperate results, no mob violence or mob rule. All gloomy prophecies about property being in danger were falsified. Why? Because, in the first place, the *composition* of the National Assembly or House of Commons (the first consideration with Burke) was not changed but improved by the introduction of the new men, particularly the great employers of labour; secondly, the franchise had only been partially and experimentally extended. There were no paid members in fear of losing their seats, no unscrupulous political gamesters like many of the members of the Convention in fear of punishment from a counter-revolution, and not many mere theorists or impracticable fanatics.

We have had two other reforms in the constitution since then, one in 1867 and one in 1884, with the final result that we have come practically to universal suffrage and democracy, the sovereignty of the people, with great benefit to the working class, and without detriment to other interests; and thus far the Revolution has justified itself, and Burke's fears have proved groundless.

BENTHAM

I. WORKS IN GENERAL AND THEORY OF MORALS

§ 1

Burke's political philosophy, so impressively delivered, so original in parts, a mixture of persuasion with good arguments, so readily intelligible and so easily applicable, furnished a new creed or body of principles for the Tory party, as well as a definite practical policy. The creed was much superior to the narrow, negative, and unenlightened one on which it had subsisted since Bolingbroke wrote his *Patriot King*. It not only furnished that party with new and more reasonable principles; it thereby really transformed the party in some considerable degree in respect to its main function and aims. Far away from the forgotten watchwords of passive obedience and non-resistance, away even from the principles of the Court party that Burke had so severely denounced in his *Thoughts on the Present Discontents*, their mission for the future, as outlined by him, was to maintain intact the fundamental institutions of the country, the Crown, the Church, the Aristocracy, and the fundamental institutions of civil society, such as property, at that time threatened, and, as a means to these great ends, to resist all innovation. Burke's own ideal statesman indeed was ne who could at once conserve and improve, conserve the good in the old while grafting upon it, if the time was suitable (as it frequently was not), an improvement that did not involve anything wholly new either in fact or principle, because, as he repeats, "to innovate is not to improve." The Tory party learned thoroughly the first half of his teaching. They

dropped, as inopportune, the idea of improvement or reform of any kind, and thus left it to be monopolised by the future Whigs.

During the tremendous life-and-death struggle, first with the Revolutionary Government and then with Napoleon, the Whigs had no chance of power, save for a brief period after Pitt's death, in 1806; and the war, as Burke prophesied, was destined to be a long one, as well as prodigal beyond all example of blood and treasure. This war, however, so disastrous during Burke's life, and, in fact, up to the temporary peace (1802), was finished with glory, as Burke prophesied it would be if Britain put forth all her energies. It was finished, and with such effect that England, that appeared sinking in 1797, occupied a more commanding position in Europe in 1815 than she had ever before held; from all which it might have been expected that the Tory party, who had so firmly held the helm and saved the nation, and largely aided to save Europe from Napoleon, would enjoy a long lease of power and popularity. But so it was not, for the conclusion of peace was quickly followed by great distress and increased pauperism, chiefly in the great manufacturing districts. The distress, for which the government was partly blamed, aroused discontent. The discontent, as usual, was fanned by demagogue orators, such as Hunt. It spread rapidly, and it gave to the genuine reformers, the Radicals, like Sir Francis Burdett and the advanced wing of the old Whig party, their long-looked-for opportunity. The old cry of parliamentary reform as the first condition of all other reform was raised afresh. The cry increased in volume and in emphasis, being caught up by the vast mass excluded from the suffrage. Immense meetings in its favour were held in the great towns, some of which were dispersed by the military. The excitement increased from day to day; the spirit of the people was roused, and all the signs of a great approaching struggle appeared.

But the greatest and most ominous fact was that the cry was taken up by the great leaders of industry, the natural chiefs of the people in the manufacturing world; by that new and

most powerful and growing interest to which the great Industrial Revolution had given birth. Here was a new natural aristocracy founded on wealth and leadership, the chief sources of all aristocracy; yet very few could hope to get into the House of Commons; not one, by any possibility, into the Upper House, into which none connected with business, save a banker, had ever been admitted.

Burke had early noted the discontent of this class, which, since his time, had grown far more numerous and powerful; they had wealth, they had social power, their employees were far more dependent on their capital and enterprise than the vassals and retainers of the feudal chiefs upon their lead and protection. But they had no political power. This state of things was unnatural, not in agreement with actual facts and social forces, and could not last. From the day that the great employers of labour and other capitalists took up the reform movement, its success was assured, and only a question of time.

Finally, the reformers had found a prophet who had already outlined a scheme of ideal legislation very suitable for future reformers to work out in practice, and one who had already written on the Constitution and Parliamentary Reform. The men of light and leading on the Radical side, like Sir Samuel Romilly, in search for the Locke of the coming revolution, announced that they had found him in the person of Bentham. The Paines and Godwins had been found to be either too extreme or hopelessly visionary and impracticable. But here was a man, practical, public-spirited, philanthropic, a clear and vigorous reasoner, a man to interpret and express the practical aspirations of Englishmen at bottom fond of liberty, haters of oppression, but also, from long instinct, and, until greatly provoked, law-abiding — a man, too, with a new and seemingly simple moral philosophy, and with a new political philosophy very different from Burke's, and suitable to their purpose. Bentham's utilitarian philosophy would appeal to the common sense as well as the sense of interest of the English people; it would be a good philosophic support for present aims and future policy after victory. Bentham would be the man to give the answer, to furnish the antidote to Burke.

It so happened, too, by good fortune at this critical stage of English politics that there were gathered round Bentham a small knot of able men, whose abilities, united to those of Bentham, were necessary to formulate a programme and to furnish arguments for the reforming party. These men were partly disciples and admirers of Bentham, but also original thinkers, who each contributed parts to the future Liberal policy and aims, the principal being Romilly, the law reformer, James Mill, the historian of India, economist and mental philosopher, Ricardo with his revised version of Adam Smith endorsing the system of *Laissez faire* and foreshadowing the future policy of Cobden; in short, the greatest area for freedom of contracts and non-interference by governments in the industrial sphere (except where it already existed in favour of employers), together with Free Trade. To this add peace abroad and retrenchment at home, and there was a very attractive programme, supported by arguments that were very difficult for the Tories to answer.

It was a programme to attract the great employers and great capitalists as well as the millions of the unenfranchised, since Bentham advocated virtually universal suffrage.

The unenfranchised multitude, the capitalists, and the philosophers, this time nearly all on one side, formed the army of attack. The help of the last was very important, and for the first time they worked "in corps"—the thing to which Burke so strongly objected—and all three forces worked together, and to such purpose that a peaceful political revolution was effected of more significance than that of 1688, which transferred the sovereign authority to the aristocracy,—a revolution that transferred power to the rich middle class, opened out a long career of political and social progress; of reform in all directions; a progressive movement which is hardly yet exhausted. In this movement much of the central impulse, especially as regarded law reform, as well as the complete philosophy of progress, moral and political, came from Bentham, insomuch that the whole after it had conquered has been called Benthamism, after his name

§ 2

The new but hitherto neglected prophet, accepted about the year 1817 as veritably such, was a remarkable man in many ways. He was a typical Englishman of the best kind; a representative of the peculiar genius of the English race, which Burke was not; practical, clear-sighted, of much common sense, filled with popular sympathies and public spirit. Without the great imagination, the dazzling rhetorical power, or the excessive sensibility of Burke, which are so many impediments to the discovery of truth, perhaps without the depth and originality of Burke, he was also entirely and absolutely free from the prejudices which Burke possessed and so powerfully defended, but which Bentham considered to be the chief cause which hindered the improvement of mankind. He had delivered himself from Bacon's Idols of the Tribe, the universal delusions of men, and from the Idols of the Theatre, as he had little or no respect for previous philosophers or their systems. He had not equally delivered himself from the last weakness of philosophers, the Idols of the Cave, those defects and infirmities proceeding from their own peculiar mental and moral natures.

He had clearness of vision, love of truth; he possessed in high degree the logical faculty. But his mind was more that of the reformer than the discoverer of truth; that is, it was more fitted for seeing an evil and devising a practical remedy, than for abstract speculation, or making discoveries in speculative morals or politics. It is true that he wrote much on these subjects, and in his early years wrote well; that his *Fragment on Government* is clear and vigorous; that both in it and in his *Theory of Legislation* he makes very happy applications of his principle of utility. The latter is an important book, which has had much influence. Still it can scarcely be called a great book, while the *Principles of Morals and Legislation* is an inferior book both in design and execution, and especially weak where it attempts to deal with morals.

It is as a law reformer and a political reformer that all his powers are shown; and a practicable scheme of reform in these departments may be as true an invention or discovery as one

made in the physical sphere, and of essentially the same kind, only far more difficult, because the physical inventor has only to deal with physical laws and phenomena ever the same, while the reformer or reforming statesman has to deal with complicated and shifting phenomena, living phenomena, acting and reacting on each other, in which case to devise remedies for evils, or to make an improvement without producing greater evils, is peculiarly difficult. Such a mind rarely appears, the constructive mind that can devise the appropriate cure for evils, or means to foreseen good ends, because he must be a man of science, and an inventor also to find the remedy, as well as a man of virtue to desire to find it; and the union of these qualities is rare. In Bentham they met.

With an active, restless, exploring mind, that ranged in all directions for improvement, like Ulysses he would be a "bringer of new things," provided they were better things. He did not dread innovations as Burke did, because everything good was originally new, hence an innovation. With a patriotic mind, and an Englishman's love of liberty (his one passion beside his passion for truth and the public good), he strongly desired that birthright of freedom which their fathers had vindicated against tyrants; and neither Hampden nor Sydney has spoken bolder words in behalf of freedom and against tyrants than Bentham in his papers on *Parliamentary Reform*, against the Sidmouths and Castlereaghs, the tyrants of his time.

His passion for the general good made him a reformer; a reformer of the constitution and a law reformer, and the greatest of reformers because he was successful where even the great and bold Puritan reformers failed. Nearly two hundred years ago they had changed the constitution temporarily. They had intended much more; intended to reform the Law and the Church, but, as Cromwell said to Ludlow, "The sons of Zeruiah are too strong for us." Bentham succeeded. The time was ripe, and the fortunate hour coincided with the appearance of the right man. The hour of reaction was come against Tory tyranny and against usurpation of the government by an oligarchy, whether Tory or Whig, against sanguinary wars

unsanctioned by the consent of the people for the benefit mainly of the better classes, but for which the people had largely to pay through their wages reduced by great taxes and loans for war purposes. The accumulated corruption in the government and in high places, and the sufferings of the sullen multitude, could no longer be endured, and a low menacing murmur of discontent swelled at length into a loud and universal cry for reform, and before all else parliamentary reform, the reform of the English constitution.

In the great struggle that ensued Bentham took a leading part, and it was his principles as given in his *Plan of Parliamentary Reform* that largely prevailed, not indeed fully at the first Reform Bill, but at the second.

He did more. He sketched out and filled in the outlines of each specific reform in law: reform in the criminal code, with a theory of punishment more rational, more in accord with our moral sentiments, more humane, and more effective; reform in the judicial establishments, in procedure, in the administration of the Equity Court, so as to diminish delay, vexation, and expense, as the result of all which he has been a greater benefactor of the English people than any other philosopher, or even than most statesmen. "I do not know," says Sir Henry Maine, "a single law reform effected since Bentham's day which cannot be traced to his influence." Elsewhere the same writer says, "It is impossible to overrate the importance to a nation or profession of having a distinct object to aim at in the pursuit of improvement. The secret of Bentham's immense influence in England during the past thirty years is his success in placing such an object before the country. He gave us a clear rule of reform . . . made the good of the community take precedence of every other object, and thus gave escape to a current which had long been trying to find its way outward."[1]

This is high praise, but not much more than is due in the department of law reform; and if the same praise cannot be given to his theoretical speculations on morals and law, yet something is still due to the memory of the man who devoted

[1] *Ancient Law*, pp. 78, 79.

his life to the discovery of truth, to the service of his countrymen, and who, by avoiding the extremes which lead to anarchy or despotism, showed the safe path of political progress.

§ 3

Born in 1748, Bentham had speculated much and written much before he took up the cause of Parliamentary Reform. Filled with restless energy, fired with a high ambition, and full, too full, of confidence in himself and his powers, he wrote much in his long life on Morals, on Legislation, on Political Economy, on Political Philosophy, on Prison Reform, on Law Reform, on the Codification of Laws, and on many other connected subjects. His first published work, published so long ago as 1776, the year of the Declaration of American Independence, was the *Fragment on Government*, which struck at the very outset the keynote of much of his life-work, which was to furnish light on law, as a speculative science, with a view to amending practice. It is mainly a criticism of a single chapter of *Blackstone's Commentaries*, dealing with the origin of government and law, but a criticism which reduces to a logical ruin the well-turned sentences of the author, especially where he holds, in a hesitating fashion, the Lockeian theory of an original contract or convention as the origin of law and government, and the subject's duty of obedience. Bentham, on the contrary, holds that government and law owe their origin and continuance to their general utility, and that our duty of obedience is owing to their continued utility, and also that disobedience and resistance, in extreme cases, can only be defended on the same ground of utility. In this brief essay is also to be found much that is afterwards made use of and further developed by Austin in his *Lectures on Jurisprudence*, especially the best known and really best part of them, entitled "The Province of Jurisprudence Determined": the theory that law is the command of the sovereign, whether one or a body (though Hobbes had already said the same); the true marks or tests of sovereignty and subjection, namely, the fact of the bulk or majority of the people being in the

habit of obedience to the commands of the one or body, such one or body being sovereign, those obeying subjects.

Bentham then turned to the subject of philanthropy, with which from natural disposition he sympathised, and which from Howard's labours was much in vogue during the last quarter of the eighteenth century. The subject of prison reform first occupied his thoughts, and from that he was led to the consideration of the whole subject of punishment. But a theory of punishment cannot be worked out without reference to the offences which punishments are intended to prevent or lessen—their general nature, their several kinds and degrees. What are offences? They are acts or forbearances contrary to law, to law as it actually is; violations of the rights conferred by law, whether regarding property, liberty, reputation, or the fulfilment of contracts. But the civil law may be imperfect, the rights conferred questionable, the punishment barbarous or excessive, in fact unjust. How are we to know whether the law is good, the rights proper, the punishment just? The answer in all cases is the same: the test of goodness or justice is the production of greater good to the community. But some had already said as much, and Bentham for greater accuracy alters the word "community" to "the greatest number" in that community. In the case of punishment, as all punishment is pain or evil, it can only be justified if it prevents greater pain to one or more, and the best and most just punishment is that which best conduces to this general end. Therefore the legal rights, the offences, and the punishments should be revised under considerations of utility.

But he had also perceived that actions were punished, and sometimes rewarded, by moral opinion or moral rules, though these moral rules might be wrong or arbitrary. The same question therefore arises again: What *should* be the moral rule in such and such cases? how should it deal with such and such actions? His answer is: Those acts should be praised whose tendency is to increase the quantity of happiness in the community, to produce the greatest balance of pleasure; those put under ban which had the contrary tendency.

Accordingly, in 1780, Bentham printed for private circulation

his *Principles of Morals and Legislation*, which aimed at developing the above general ideas: an ambitious but unfinished and abortive book, in which there are no principles of civil legislation, only a very slender treatment of the principles of morals, followed by a theory of punishment, and an interminable chapter on offences and their classifications.

His whole theory of morals in particular is incoherent, shallow, and fragmentary. Still, as the theory of utility in its simplest statement underlies his theory of legislation and his scheme of codification, as he undertook to give a justification for every proper law from the principle of utility alone, and, moreover, as the theory has been adopted and developed by more consistent and clearer moral thinkers, it requires a more careful examination than its intrinsic merits could claim for it. Nor let the reader suppose that moral theory lies outside our proper subject. For morals and politics are inseparably connected; some moral theory is always presupposed in political speculation, in legislation, and in the administration of the law. Statesmen when they make laws, judges when they interpret them, must be guided, consciously or unconsciously, either wholly by consideration of utility (if they accept utilitarianism), or else by their sense of natural justice, or moral sense, or by the general moral opinion of the community, based on a sort of compromise between the considerations of utility and justice. We find, too, that philosophers like Hobbes and Locke base their political theories on moral theories,—in their case on the theory of natural law; that Burke, though not very consistent or clear on the subject, since he denies that there were discoveries to be made in morals or the principles of government, yet has to fall back in his political reasoning partly on the theories of natural law and utility, partly on the theory that men are moved to action by their moral sentiments, manners and prejudices, which leans to the new moral school of Butler and Hutcheson.

With Bentham the moral theory underlying his political theories is the theory of utility; the theory according to which actions are right or good in proportion as their tendency is to produce a balance of utility or pleasure or happiness, to use the

more general word, but always understood to be some form of pleasure (or, which is sometimes the same thing, a diminution of pain). In like manner actions are wrong if their general tendency is to produce more pain than pleasure, more misery than happiness, taking into account the whole possible train of consequences.

But at the time when Bentham was writing his *Principles of Morals and Legislation* there were already in the field, speaking broadly, two predominant theories,—the one the theory of the new intuitive school resting on conscience, moral sense, or moral faculty, whose business it was to distinguish right and wrong actions; the other, a much older one, called the theory of natural law, whose contents the new moralists desired to make clearer by providing more definite tests of what they should be; that is to say, they did not seek to construct a theory in opposition to natural law, but to furnish a further development and a justification of it. Of the remarkable series of moral systems given to the world ever since the appearance of Hobbes' great work, that of Butler, as given in his famous *Sermons*, is the greatest and perhaps the best representative. In this book Butler maintains that we can determine immediately whether an act is right or wrong without regard to consequences, by a certain part or faculty called conscience, sometimes the "approving and disapproving faculty," a faculty partly moral, partly intellectual, whose existence could not possibly be disputed but "from mere affectation." It is its special business to distinguish moral from immoral or neutral actions, just as it is the business of our purely speculative faculty or intellect to distinguish truth and falsehood; or again of the æsthetic sense, as pointed out by Hutcheson, to distinguish the beautiful from the deformed or ugly. There was also the system of Adam Smith, who largely agrees with Butler that conscience was the supreme directing faculty, but being liable to private bias in certain cases (as even Butler allows) he thinks that a sort of ideal or standard conscience, a corrected and objective conscience, so to say, might be found—not in the individual conscience, liable to self-partiality, but in the imagined judgment of an external impartial spectator. We should ask in such a case what would

such disinterested person decide as the right and proper action; and to some such device we are still driven when disputes are referred to an impartial arbitrator, or where a difference is referred to the decision of a jury, as to who is legally in the right or wrong, or still better to the decision of an enlightened and impartial judge, who often has to pronounce on the moral as well as legal aspect of acts in a court of justice.

All these new theories should be regarded in the light of attempted improvements in the old theory of natural law as applied in the moral as distinct from the legal sphere of conduct. For Butler, Hutcheson, and Smith all believed in the *Jus Naturale*. And it was Butler's express aim to discover from human nature as revealed by psychology, from the actual moral constitution of man, what course of action was correspondent to it, was fit, proper, and right; and from this constitution he argues that man acts rightly when he acts according to his nature, his desires, appetites, affections, self-love, provided they are all controlled and advised by conscience informed by reason; and this conscience, partly moral, partly intellectual, was the supreme faculty for directing individual conduct. This was a new contribution to the old theory of natural law, which had indeed, as Hobbes had pointed out, indicated and inculcated the particular virtues—veracity, gratitude, mercy, justice, etc. There were moral rules, part of natural law, suggested by reason, working on our natural and instinctive moral sentiments. Reason and considerations of utility had improved them, still they were first the suggestions of nature. In particular, the theory of natural law had improved the civil law, the chancellors and equity judges being largely guided by its principles in their equity decisions. But natural law in its application to equity had been developed as far as was possible without new moral ideas or new points of view or a revolutionary interpretation of it, such as was contained in Rousseau's doctrine of the natural rights of man. In fact, as Sir Henry Maine affirms, equity in England, at the time of Lord Eldon, had become as rigid and inelastic as the common law had been when equity was first called in to supplement it. Its equity had become inequitable from not advancing with the better

moral ideas and sentiments as well as the improved moral practice of the time.

There was also another moral theory; an old theory revived by Hume, Priestley, and later by Paley, which was opposed to both the old theory of natural law and the new intuitional theories—the theory of utility as the sole test and principle of morals. Bentham adopted this theory, he tells us, from Hume. He tried to develop it further, and by good fortune has got the whole credit of being the founder of utilitarianism.

Thus, then, there were already in existence in 1780 at least two moral systems to guide men's private actions. One was the law of nature, with a great history of at least two thousand years behind it, which offered itself as a model for the civil law as well as the source of the moral law; the other, the new theory based on conscience or moral sense; and it lay on Bentham in his assumed rôle of reformer in moral philosophy to refute the school or schools in the ascendant. The way in which he attempts to do this is at least original. He puts them all into two classes,—one called the "ascetic" school, the other the school of "sympathy and antipathy," including most of the original speculators since the time of Hobbes. In regard to the first, who thought that pain should sometimes be courted and pleasure shunned, he simply repudiates the view; affirms that the production of pain is wrong, unless to diminish future pain or promote future pleasure. As regards the rest, he attempts to refute them *en bloc*, by labelling them all together, as following the principle of sympathy or antipathy, and then by identifying such principles (whether called moral faculty, moral sense, conscience, common sense, moral reason, etc.) with, or bringing them under, the whole genus of innate prejudices, which, of course, deserve no respect as moral guides. They are "merely so many contrivances for avoiding the obligation of appealing to any external standard and for prevailing upon the reader to accept the author's sentiments or opinion as a reason for itself." They are question-begging names, to colour our prejudices, our likes and dislikes, and like all prejudices the

greatest bar to truth and human improvement, "a cloak and pretence and aliment to despotism." By this method of summary conviction he disposes of some half-dozen systems at a single stroke. But this is not refutation but a mere assuming of the point at issue, with the additional fallacy, or sophism rather, of assuming that the different systems are all forms of one system. They each rest on specific grounds, make separate appeals to reason, and his business was to select the best of them, to address himself to their grounds and reasons, and, if he was able, to refute them separately. But this he makes no attempt to do. In a footnote, indeed, he attempts to deal with them *seriatim*. But it is rather a travesty of each system that he gives us, with a contemptuous sentence or two by way of refutation.[1]

Let us now follow the constructive part of Bentham's own theory so far as he gets with it. He has decided that there is no moral faculty or conscience whose business it is to inform us of the morality of acts; and as for the so-called law of nature, "people," he tells us, "go on giving you their sentiments about what is right and wrong; and these sentiments, you are to understand, are so many chapters and sections of the law of nature." It is solely by the principle of utility that the moral character of acts can be known; by their tendency to produce a balance of happiness, or if any special faculty were concerned it would be the faculty of reason, which is called upon to trace the good or evil, to make the complete calculation of each, and to strike the balance after setting off the one against the other. This is indeed a difficult operation sometimes. Still it has been largely done for us already; the experience of the race has not been for nothing as to the good or bad consequences of actions (as Mill explains). Moreover, Bentham proposes to simplify the calculation of consequences very greatly by reducing all apparent differences in kind

[1] This part of Bentham is so weak that even his disciple Mill repudiates it, since he allows the existence and office of conscience; allows moral sentiments, which point and urge to appropriate actions, that is, he takes a great stride towards the opposite camp, and greatly lessens the distance between *his* utilitarianism and the *à priori* or intuitional school.

amongst pleasures to differences of degree. This is fortunate for him, if it be true, because otherwise the quantity of pleasure or pain following actions could not be known for want of a common measure. Pleasures then or pains differ in degree or intensity, in duration, in certainty or uncertainty, in propinquity or remoteness. To these add the fecundity and purity and the extent or number of persons likely to be affected, and we have all that is necessary for our calculation of the total quantity.

Then follows his rules or process for estimating the general tendency of any act by which the interests of a community are affected. "Begin," he tells us, "with any one person of those whose interests seem most immediately to be affected by it, and take an account—

"1. Of the value of each distinguishable *pleasure* which appears to be produced by it in the *first* instance;

"2. Of the value of each pain which appears to be produced by it in the *first* instance;

"3. Of the value of each pleasure which appears to be produced by it *after* the first. This constitutes the *fecundity* of the first pleasure, and the *impurity* of the first *pain*;

"4. Of the value of each pain which appears to be produced by it after the first. This constitutes the *fecundity* of the first *pain*, and the *impurity* of the first pleasure.

"5. Sum up all the values of all the *pleasures* on one side, and those of all the *pains* on the other. The balance, if it be on the side of pleasure, will give the good tendency of the act upon the whole, with respect to the interest of that individual person; if on the side of pain, the bad tendency of it on the whole.

"6. Take an account of the *number* of persons whose interest appears to be concerned; and repeat the above process with respect to each. *Sum up* the numbers expressive of the degrees of good tendency, which the act has with respect to each individual in regard to whom the tendency of it is *good* upon the whole; do this again with respect to each individual in regard to whom the tendency of it is bad upon the whole. Take the *balance*; which, if on the side of pleasure, will give

the general good tendency of the act with respect to the total number or community of individuals concerned; if on the side of pain, the general evil tendency with respect to the same community."[1]

He gives us four different sources or sanctions of pleasure, namely, the physical, political, moral, religious—the last three having been already given by Locke, the first one by Butler in his theory of "natural government,"[2] in which he makes the pleasures and pains that naturally follow acts a species of rewards and punishments annexed to natural laws or commands.

He pretends to enumerate the different kinds of pleasures and pains in a list which is far from exhaustive; discriminates the "circumstances influencing sensibility," that is, which make the pleasures and pains vary from the normal or ordinary standard, and having done so we find his theory of utility is finished; for what he says about motives, intentions, dispositions, consciousness, is all preparatory to his doctrine of punishment, since to stop ill acts by punishment it is necessary to analyse these notions. This part of the work is better, and his doctrine of punishment which follows deserves praise. The like cannot be said of his long and tedious classification of offences filling nearly half the book; full of repetitions, most of the classifications being obvious or easily gathered from actual legal systems. He then gives us a chapter containing the distinction between what he calls private ethics and the art of legislation; the former relating to the proper conduct of the individual in search of his own happiness; the other to the laws that should be laid down by the legislator to promote the general happiness. There are cases where the legislator should not interfere. These are left to private ethics; they are really left on his principles to positive morality or positive moral rules, which is a very different thing. Lastly, we have some good remarks about the nature of universal jurisprudence, which afterwards bore fruit in Austin's *Lectures on Jurisprudence.*

[1] *Principles of Morals and Legislation* (Clarendon Press), pp. 30, 31.
[2] *Analogy*, chap. ii., treating of "natural government,"

§ 4

We are here chiefly concerned with his theory of utility, which, crude as it is, it is necessary to examine fully. According to Bentham, we are to do that which will bring the most happiness, we are not to do that which produces a balance of unhappiness, and happiness has for its raw materials pleasures of different sorts, amongst which may come in occasionally the pleasures of benevolence.[1]

But in order to apply Bentham's test, to know if an act will bring in a balance of happiness or pleasure, in order to add up and cast our profit and loss account, pleasures must be capable of being compared quantitatively. They must be reducible to some common measure, so that we could say that so much of this kind is equal to so much of that. They must be all reducible to something common. Accordingly, Bentham lays down that pleasures only differ in intensity, duration, certainty or uncertainty, propinquity or remoteness in time. But Paley rightly excluded, as we think, the two latter, thus leaving only differences in intensity (degree) and in duration.

Bentham allows of no difference in kind. The pleasure of poetry only differs in degree or duration from the pleasure of the table. But that there is a difference in kind, and that no amount of one kind would compensate for the loss of the other, the consciousness and conduct of the human race testifies. That they are incommensurable, that one kind is enormously more desired, that another sort just as intense and that may be had as long as anyone wishes is valued slightly, are facts not to be disputed; and, indeed, Mill admits them, passing in silence over this part of Bentham. But Bentham had to deny any difference in quality, otherwise pleasures could not be compared quantitatively, so that he could say how much of the one was equal to how much of the other, or express them all, so to say, in terms of the same unit. If we cannot compare the pleasures quantitatively, it is impossible to sum up the amount, the quantity of pleasure following, but imprudent to act until we know. It is evident too that the

[1] *Principles of Morals and Legislation*, p. 313.

degree of certainty of a future pleasure does not admit of a quantitative comparison even with the other elements, duration and intensity. It counts for something surely, *e.g.* the uncertainty of the enjoyment of future wealth makes its estimated present value less, and sometimes makes men prodigals. But how much less who could exactly say? To apply Bentham's test or measure we should be able to refer all pleasures to a common standard measure, and then multiply those that are prolonged by some number expressing length of time, those in higher degree than the standard one by another number (though it will be hard to get our pathometer), then we should check or make some allowance (but how much?) for the degree of uncertainty. We have to do all this for the pains too, and we may have to carry this through a long and shifting train of consequences with ever new pleasures and pains to be estimated in the same way, and then comes the set-off problem. How much pain is a set-off for how much pleasure? How much remorse, say, for a present physical enjoyment? Judge then of the certainty and value of such a test of proper action even in the sphere of prudence, which of course is not the important part of morals. Happily, Bentham tells us we need not go through the calculation before every action. It seems it has somehow been done for us already, and we may largely go on testimony and trust.

It would not, I think, be easy for the individual to regulate his life by this principle of utility or this calculus of pleasure. But let us test the theory a little further. The ordinary virtues and most moral rules are to be followed because they tend to the general happiness and the greatest sum of it. But to get this maximum in which everyone is interested, because the larger the general stock the greater each one's share, it is necessary that each one obeys the rule, and the greater the number of violators the less the happiness which the particular rule tends to produce, will be realised. Now, individuals know that the general happiness so far as depending on this rule can only be secured by its observance; but some of them have the temptation to break the rule when there promises to be an advantage in so doing greater than their share of the

general advantage from its observance, especially if they think they can escape detection or punishment; in which case being, as Bentham says, "governed by pleasure and pain in all that they do or say or think," if they have no moral shrinkings or scruples, no conscience, to use the ordinary word, to protest against it, they should break the rule on Bentham's principles. Further, they must do so, unless there is a penalty attached so great and so certain that it will appear to be the individual's interest not to do so. It is but a question of altering the weights of reward and punishment (pleasure and pain) by putting such a heavy weight of penalty (prospective pain) into the other scale as will neutralise the expected pleasure of the breach. On the one hand, so much pleasure with a risk of detection and punishment, which may be discounted and deducted. On the other side to deter, a great pain, detection followed by social disgrace, to be set against the share of the general advantage which the rule secures. Only make the pain sufficiently large, it would seem, and the immoral individual can be induced to fall into line with the obedient citizens. To do this is the work of the legislator in the case of law, or of public opinion in the case of moral rules.

But the penalty must be *certain* to effect its purpose while there are all degrees of certainty down to a mere faint possibility; and if a person can be tolerably certain of not being detected in the case of a violated law, or of not being detected or not punished if detected in the case of a moral rule broken, he may do, and on Bentham's principle ought to do, the prohibited act, if there is no such a thing as conscience or moral repugnance to be overcome. In fact it is not a wrongful act in the supposed case, but a prudent act calculated to add to the doer's happiness, and everyone does and should act for his own happiness. It tends indeed to diminish the general happiness, but not to diminish his own, and we are told he can have no motives except his own to move him or to restrain him; he can only have a benevolent motive to restrain, if he is benevolent, and it may not be strong enough, while many have it in no degree. In short, what on his fundamental principle a person cannot help doing — following the larger mass of

pleasure and avoiding pain—ought not to be called wrong or immoral, and ought not to be punished.

In like manner positive laws, civil and criminal laws, are to be tested by their tendency to produce the greatest happiness to the community. Take the case of property, which is everywhere protected by law, and in the main, according to Bentham, because it is for the happiness of the greatest number; in fact it is because it is every person's interest to secure the greatest quantum of divisible happiness that can come from property, that property is made sacred and defended by law. But it appears not to be for the interest of thieves or burglars or swindlers and cheats to respect property, though they would like all but themselves and colleagues to respect it, because they know as well as Hobbes that if no one respected property there would not be much for them to attack. Granted the thief is a bad citizen, how, on Bentham's principles, is he immoral? Clearly not if he is born a thief, because he can be under no obligation to obey laws which will cause him to die of hunger, unless he goes on the parish, which without having made Bentham's exact calculation of pains and pleasures he has decided against. In any other case he weighs his chances, takes what property he can, thinking that this is on the whole his interest in spite of the danger of punishment. Weighing the possible booty against the possible punishment, and provided there are not too many undetected thieves, he still benefits by the respect for property in the great majority.

Bentham's answer would probably be: Such acts as theft, fraud, burglary, are bad and immoral, because they tend to subtract much from the general happiness, and if the thief or burglar does not think them bad or immoral, utilitarians do. They are bad because they produce a great balance of unhappiness, insecurity of property, loss of property, alarm, etc., and all the greater the more unconvicted thieves there are. From the thief's point of view, if he does not feel he ought not to steal from a conscience that we allow he has not, and which if he had would not be a guide, yet he knows the law and the penalty, which latter the law should make so certain and

effective that it will be the thief's interest to fall in with the law, taking all things into account.

This seems all the answer that is possible from Bentham's side, but it is not quite satisfactory, because the only obligation to obey is the fear of punishment and not the protest of his own nature or conscience; and if he can escape the former, being bound from self-interest, and even necessarily bound to follow the greatest pleasure, he has, as Butler says, an obligation to vice, if conscience be supposed out of the case. "His own interest is a manifest obligation," says Butler, "and there is not supposed any other." Take away conscience, moral sense, moral sentiments, as Bentham does, and there is no such thing as moral or immoral, good or bad acts, though there may remain acts that are generally useful or hurtful. The detected thief or swindler has only made a miscalculation in that case. Vice, in general, is only a miscalculation of chances.

But I must go further and say that, even in the case of the detected, punishment, which it is the main object of his book to make less in amount as well as more useful, cannot be justified on Bentham's principles. It is merely the exercise of force on the part of society, the majority, for its own benefit. Take away the instinctive feeling of wrong or injustice and the instinctive desire for punishing the offender, a feeling universal when one is injured, a feeling which the injurer, the thief, or fraudulent person, possesses likewise, a feeling which lies at the root of justice, as even Mill allows as well as Butler, there is then no moral justification for legal punishment but the benefit of society. May Bentham reply that that is quite sufficient justification; that when one of two interests is inconsistent with the other, the smaller should give place to the greater; the supposed interest of the thief or burglar to the larger interest of society composed of many persons. I reply that it is, perhaps, the best answer possible; but besides being inconsistent with his fundamental principle, it is neither proved nor self-evident that the true test of right action is its tendency to produce the happiness of the majority. It would on this view be only necessary for thieves and dishonest persons to be in a majority and to come to the conclusion of the French

communist that "property is robbery" for them to have all the right on their side, if there is no such thing as natural justice, and a moral sense responding to it.

Society is only justified in applying punishment to an offender when its members generally feel that it is just and right, as well as generally useful that he should be punished; that he is only getting what he deserves, and the offender should feel like the penitent thief in the Gospel — "We receive the due reward of our deeds." This feeling of justice is a part of the collective conscience made up of individual consciences, the existence of which Bentham denies, and by so doing takes away the moral base of punishment.

The moral sentiments and the collective conscience here in question are based on the feeling of wrong suffered and the desire of punishment when one receives an unprovoked injury. It exists in all men, and even in the lower animals something similar shows itself instinctively and immediately and leads to retaliation. It is given to men for their preservation, the protection of themselves, including their children and their property, so that its object may be said to be utilitarian; but the instinct, the intuition itself, which is a rudimentary moral sense or feeling of right and wrong, and the origin of a large part of conscience, cannot be resolved into considerations of utility. Thus, then, finally, in denying a conscience or moral sense or instinctive moral sentiments, not only is Bentham's general theory of morals weak and non-moral, but his theory of punishment, his first and his last thought, in place of resting on the unshakable base of general human nature, rests on the right of the strongest.

§ 5

To return to his theory of happiness. We have seen that his calculus of pleasure and pain would be very difficult to apply, so as to help us in pursuing our own happiness. But this is the chief thing, because we have no adequate motive, he tells us, to follow any course that does not conduce to our own happiness.[1] We can only pursue the happiness of others, so far as it

[1] *Principles of Morals and Legislation*, p. 313.

forms a part of our own, is subordinated to our own, as when, under the impulse of benevolence, sympathy, or natural affection, we try to promote the happiness of others. But then what becomes of the dictum that "morality commands each individual to do all that is for the advantage (*i.e.* for the happiness) of the community, his own personal advantage included"?[1] Is it not evident that the average man has no motive that can possibly animate him to go beyond his family, his friends, perhaps his party or sect, or some distressed persons, or in the case of an exceptionally benevolent person (like the late Baroness Hirsch) with greater means, perhaps to embrace a somewhat wider view in the distribution of charities? On the other hand, if the selfish feelings happen to be comparatively strong, a man will neglect the happiness even of those who have the clearest claims on him, unless the sanction of opinion compels him to the contrary course, that is, unless the fear of punishment acts on him. It may, perhaps, be replied by a disciple like Mill—for Bentham on his principles cannot reply—that utilitarianism only asks him to aim at the happiness of all equally, himself included, "everybody to count for one, nobody for more than one." But, according to Bentham's fundamental principle, a man can only be induced to act from an expectation of greater pleasure on the whole to himself by so acting; and unless a man does actually love all his neighbours (and not merely his friends) as himself, he would be acting absurdly if he tried to act on Bentham's command. There would be no pleasure or profit in the doing the greater part of it. Therefore his action would be without an adequate cause, which is no more possible in the moral world than in the physical. Only a very peculiar man like Howard can have a love for mankind, or even his countrymen, or even his townsmen; but, what is more to the point, to aim at the general happiness is not only absurd from want of motive; if attempted to be carried out, a whole cluster of absurdities and practical contradictions would ensue. Everyone is to aim at the general happiness; is to be thinking of the happiness of other people mainly, his own counting only on a level with any other

[1] *Theory of Legislation*, p. 60.

person, in which case he will not only not add to the general happiness, but he will miss his own that he might have secured. We should have a topsy-turvy world, in which each one is aiming at the other's happiness, forgetting his own. But as, in this competition of philanthropy, he must be content to receive as well as dispense benefits, he will perhaps get back as much as he gave. But this might not amount to much. For our happiness can be best achieved by ourselves; in fact, for the most part, it is intrusted specially to "our own keeping," as Butler says. We ourselves are in a peculiarly favourable condition for promoting it from knowing our own peculiar temperament and circumstances, our wants and aspirations or endeavours. As a rule, no one can help us much, though some may much hinder us by well-meant interference; though of course at times we may want assistance, advice, and good offices, which we should hold ourselves bound to the best of our ability to repay.

But, on the absurd theory of pursuing the general happiness, a man is not to be specially labouring for his own but partly for it and mainly for that of others; how many we know not. Each one in like manner is to be so engaged, and with the sure result that each one's stock will be much smaller, while the contribution that he receives from his neighbour's somewhat imperfect attempts to supplement it, will not make up the deficiency. At best it would amount to this. I am to try to add to, say, ten other persons' happiness, and each of them in turn is to try to add to that of mine and all the rest, in which circumstances each one would be trying to do that for which he was least fitted, and neglecting that for which he was most fitted, namely, his own affairs, his own happiness. In such a world of philanthropic busybodies, all would be badly done, and in a most roundabout fashion; the division of labour, and the "classification according to aptitudes," would be amongst the worst conceivable, and the net result of happiness small. If this plan were tried between two persons, it would be seen to be absurd; how much more if it were made the rule in a single city, not to say a country! Might it be said that it is realised in a communistic society, hold-

ing property in common, living and labouring together and dividing the produce of the labour equally; that each pursues the happiness of all the rest, including his own, and that "everybody counts for one and nobody for more than one." Very possibly this was the model in Mill's mind, in favour of which he argues in his *Political Economy*, but under communism each one does not concern himself with the happiness of the rest individually, to the neglect of his own, but each aims at increasing a common stock of the material means of happiness of which he gets his equal share. It is a possible scheme, but in Bentham's opinion the amount of happiness realised under it is not great.[1] And it is sufficient answer to this view to say that the "greatest happiness principle" had necessary reference to an individualistic society such as our own, where, as we have seen, it involves a tissue of absurdities.[2]

The truth is, that to aim at the happiness of others individually, or rather the diminution of unhappiness in its most formidable shapes—sorrow, sickness, poverty, the losses and crosses of life—is the exceptional business of certain specialists for whom there is a need, just as there is a need for physicians (but not too many physicians), namely, sisters of charity, volunteer hospital nurses, clergymen in part of their character, philanthropists who aim more comprehensively, benevolent persons, thoughtful in dispensing their beneficence, lest they do more harm than good and so lessen happiness, and confidential private friends, whose counsel and sympathy may lighten our troubles, as their presence or regard may add to our happiness. On the moral reformer or teacher, and the statesman, it is incumbent to aim at the general happiness, but in a quite different sense. The statesman aims at producing happiness in the gross, for large masses, by good laws or measures; he aims at the collective

[1] *Theory of Legislation*, p. 121.

[2] It might be imagined that I have misinterpreted Mill's meaning, as it seems difficult to believe that so able a man as Mill could have held the views above criticised; but both Prof. Grote and Herbert Spencer understand him in the sense that I have attributed to him. See Grote, *Exam. of the Utilitarian Philosophy*, chap. v.; and Spencer, *Data of Ethics*, chap. xiii. §§ 85–87.

instead of the individual happiness—at the happiness or well-being of *most* or *all*, instead of *each* severally. In like manner, the moral reformer and the spiritual teacher of his time aim at comprehensive results. But perhaps Bentham only meant that it should be the general aim of all to get a good government which should make wise laws according to the principle of utility, and thereafter by obedience to such laws as well as to positive moral rules framed on the same principle of utility we should all be acting for the general happiness, including our own. But if he only meant this he should have given us the minor moral rules for guidance of life, since the general one, to aim at the general happiness, is impossible, and political action makes but a small part of life. He really seems to have meant much more, to ask for more than political action, much effort for others, though from his fundamental principle he should have asked for nothing that benevolence or sympathy would not spontaneously suggest. Mill, in his *Utilitarianism*, certainly asks us to aim at the general happiness, our own included; but, as I have shown above, he is not likely to get the generality to follow his maxim so long as common-sense exists, and the moral world is something of a cosmos. We only want a limited number of benevolent, philanthropic, and devoted persons sufficient for the work, happily not infinite, and for some time past decreasing in extent and urgency. More volunteers would only embarrass; all would imply chaos, chaos in fact, and even to think it out in imagination.

This impossible philanthropy of Bentham and Mill is to be distinguished from the "love and service of humanity" of the Comtist, or as it is called the Religion of Humanity, to which at first sight it appears to bear considerable resemblance, but from which, amongst other things, it differs by being more impracticable and contradictory.

As far as the "love of humanity" is concerned, it is not here necessary to inquire how far it is possible to have any definite feeling for a vast entity like humanity, the best and noblest part of which is dead and passed away, while some part is not yet born, and much of what is alive and concrete may affect us in a manner that arouses anything but love. To form the con-

ception of such is difficult, to have any real feeling for the composite object of it, is difficult. But it is perhaps psychologically possible to have a kind of love for the vast Being (much of which is not in being) through its best representatives, who are chiefly and necessarily the mighty dead, whose character and works are beyond dispute. For these, for their name and memory, it is possible to have a peculiar feeling, composed of affection, admiration, gratitude, awe, and reverence; and naturally we have it more real for the great religious founders, poets, and philosophers, the best part of whose mind and spirit was left behind for the world and is still alive in their works, for our comfort or consolation or delight. This is perhaps possible, and hence the cult of great names—of the great servers of the race, the great founders of religion, lawgivers, poets, philosophers, scientific discoverers, the revolutionary inventors, even great national founders or deliverers, sometimes even great captains and conquering kings—is worthy of praise. It tends moreover to make us reverence and admire true greatness so far as we encounter it in the world of living men. So far we might go with the Positivist.

As for the "Service of Humanity," it is open to most of the objections already urged against the pursuit of the general happiness individually as a practicable aim. For as we best secure the general happiness by each one's securing what is possible for himself, and those dependent on him, and that mainly by fulfilling the duties of our allotted social functions, and then finding that happiness or a diminution of unhappiness naturally flows from it, so the general service of humanity is best and properly discharged in the same identical way; by each one literally engaging in some concrete service, some definite sphere of usefulness, that humanity, or rather the community, requires. The labour itself, honestly done, and not seeking too high a price for it, results in the service and the worship. The aphorism *Laborare est orare* is perpetually true. And it is not ungrateful service. It brings both material and mental rewards. The best happiness we can expect to get is annexed to it, and this not by chance but by design, as I should say, by necessary connection, as Herbert Spencer regards it, the natural

law that the exercise of organs or functions is normally followed by pleasure, without which connection neither the human species nor any other could have continued to exist, still less to thrive and progress. The happiness comes in the manner of Bentham's physical or natural sanctions, though the theory is really as old as Aristotle, who laid down that pleasure was the concomitant of the unimpeded energy of a natural power, faculty, or acquired habit.[1]

As for any more general devotion to humanity, it is only the few who can put such a large object as the general service of man before them, and they are necessarily much the same as those before mentioned who have been told off voluntarily to mitigate the general pain, sorrow, sickness, undeserved poverty, or those, such as statesmen and legislators, who control the affairs of nations.

To conclude, Bentham's supposed grand discovery turns out to be chaotic, impracticable, and, so far as it could be applied at all, mischievous. If we contrast with his formula the rule given by Butler in his Sermon *Upon the Love of our Neighbour*,[2] we find the latter far more practicable as well as pertinent. Thus he tells us that to love our neighbour as ourself must in reason be understood to mean that first a due provision is made for self, for our own happiness, "because we are in a peculiar manner . . . intrusted with ourselves; and therefore care of our own interest as well as of our conduct particularly belongs to us," and thereafter that the "more of our care and thought and fortune" is devoted to others the nearer we come to the counsel of perfection—to love our neighbour as ourself. And reason, moreover, he explains, points out that our benevolence should not be indiscriminate,—that our efforts must be confined to our neighbourhood, that "children and families" come first in our regards; that "friendship or former obligations" require that we do good to some preferably to others: and thus, finally, we get practical guidance from Butler, the man who believes in moral sense; while from Bentham, who fancied he had refuted all theories of moral

[1] *Nic. Ethics*, chap. x. 4, 5.
[2] Sermon xii.

sense and conscience, we get only what in the sphere of morals (as distinct from that of legislation) is a hollow and inapplicable phrase.

§ 6

There is yet another count in the indictment of Bentham's moral system. While making absurd demands on human nature for impracticable virtues, inconsistent with his own fundamental principles, he fails to point out the need for devotion and sacrifice, and has not discovered that there is such a remarkable fact in human nature.

But the fact is there; and there are reasons why it should be so. For society will always require sacrifice from all at certain times and situations, but more especially from certain callings. Society always has required, always will require it, though probably in less degree as the world progresses. Society will call for it in certain circumstances, will expect it, and will get it in the hour of need from her devoted children, whether told off or voluntarily offering for the post of honour and danger. She will send her sons to certain danger, sometimes to certain death; and, what is more remarkable, they will go without a murmur, nay, even cheerfully, sometimes joyously. Can this be explained on any moral theory? Yes; but not on Bentham's.

The primitive germ of sacrifice is to be found in the parent animal's devotion to its offspring, whose safety and nurture require the care, the labour, and the protection of the parent. It exists in the lower animals as well as in the human species, and in the case of the former the parent animal will combat to death for the young. It is an instinct in all cases, even in the human animal. The instinct is natural; it exists because it is necessary, because without it the offspring, the family, could not be reared, nor (in the human species) the larger group of kindred, which proceeds from the family, be formed. In a word, without the instinct neither the family, the tribe, nor the nation could have come into being. Human society could not have existed without it. Bentham in his later writings insists on the fact that, without selfishness or

egoism, neither life nor society would have been possible. He has omitted the other side of the story that without the opposite fact of sacrifice it could not have arisen, and could not continue to exist without it even now. But it was especially when the tribe or clan was formed that this part of human nature received a prodigious development, for then it became necessary that men should be ready to fight, and, if need be, die for the larger group, whose most vital interest of self-preservation required it. Though there was much harmony within the groups of kinsmen, the records of history show us incessant war between the groups, and later on between the nations, that resulted from the forced aggregation of the groups. Under such circumstances from the primitive natural germ was developed unflinching courage, absolute and entire devotedness, and the spirit of sacrifice, at a moment's notice, as the most necessary and almost the sole virtues to save the clan from its enemies.

In order to call out fully such necessary but costly and, to the possessor, sometimes self-destroying virtues, it became necessary to stamp them with the highest approbation and praise. The general applause was given to courage and daring and success in war. The martial virtues were rated above all others, which seemed as nothing in comparison; and to them were nothing. Only the deeds of the warrior in primitive times and for long ages after will be sung by minstrel or bard; only "the brave will deserve the fair." Courage thus becomes the cardinal, almost the sole virtue. The opposite quality is branded with infamy to such a degree that even the timid by nature rises to a certain level of courage, and "who would fill a coward's grave" was rarely to be found; in process of time only the brave were born, as the coward or faint-hearted could not find a spouse. And thus courage, so necessary for the good of the clan, became a quality transmitted by heredity, with a certain tendency to improve, but checked by the frequently early death without children of the most daring. There resulted finally from the inborn fighting instinct the high level of courage and devotion through heredity and the praise bestowed upon it, and the perception of the imperative

need for it to protect them from their enemies, perhaps from massacre or slavery—a firm and noble frame of soul that in the more generous and daring spirits courts danger and scorns death; which will show itself in later times in spirits like young Fortinbras in the play—

> "a delicate and tender prince,
> Whose spirit with divine ambition puff'd
> Makes mouths at the invisible event,
> Exposing what is mortal and unsure
> To all that fortune, death and danger dare,
> Even for an egg-shell"—

whose followers, "twenty thousand men," "for a fantasy and trick of fame" will "go to their graves like beds." This spirit rises to its height in Hotspur, in whose person Shakespeare has revealed the inmost soul of the feudal warrior, who has idealised war with all its horrors, in whom danger only rouses a noble excitement, the very opposite of fear, who loves it as the path to a glorified honour, who lives in his grand illusions and dies for them. Even our King William III., as Macaulay tells us, was never joyous but on the day of battle, while the dauntless and devoted spirit may go to the extreme length of the Highland clan (the Macdonalds), who sulked on the morning of Culloden because they were denied their privilege of leading the van, that is, of being where death was surest.

What produces the miracle, for miracle it is on Bentham's principles, we have just explained. Can it be said that the virtues of sacrifice and devotion owe their origin to their utility? These particular virtues were useful, certainly—most useful; but not always to the individual possessors. In the parent or in the soldier, devotion often led to their destruction. They were altruistic virtues, not self-regarding, and, even though useful to others, it was not from a perception and a calculation of their usefulness that they came into being. They were a gift from nature, they came from an immediate blind instinct and impulse, without which, on the parent's part, they would not have taken all the trouble or made the sacrifices for

the offspring. The instinct, the original impulse, is here as in all other cases, the origin or root of the moral sentiments that afterwards so gloriously flowered on it. And these, again, drew in their train other high and manly virtues, all of which were developed in this severe school of war—self-respect, sense of personal worth and dignity, which all brave men felt, a nice sense of honour, certain chivalrous feelings, even respect and admiration for brave enemies, which gradually mitigated the brutalities of war and the horrors of the battlefield. Add the dread of shame and fear and we have a whole province of human nature, undiscovered by Bentham, a whole troop of virile and noble virtues, the fundamental ones necessary for the existence of the species and their later outgrowths for its progress, though they count for little in Bentham's catalogues and cannot be explained on his principles.

War was the school of these virtues; but inside the clan, for tranquillity and harmony a different order of virtues was necessary; the virtues of veracity, justice, and goodwill to the kinsmen, all of which were pointed out by nature and instinct, though their general utility was also manifest.

§ 7

What appears to have led Bentham to his narrow and chaotic theory of morals, if it deserves the name of theory, would appear to be as follows. In 1776 in his *Fragment on Government* he writes that the suggestion of Hume that the principle of utility would explain everything in morals and politics flashed across his mind in all its truth and range, and that the more he thought of it the truer it appeared.

In 1778, being then under the influence of Howard's philanthropic movement, he tells us he turned aside from a work on which he was then engaged on the theory of punishment. As a philanthropist, he would wish to do good, to produce pleasure and happiness to a large circle of mankind. To such a one the question arose: Why was there such a thing as punishment, that is, pain? It should only be, he replies, to prevent greater

pains, that result to the indefinite general public when offences or crimes are committed, perhaps also to give special satisfaction or pleasure to the injured party, and a very mild diffused satisfaction to the public generally, who can place themselves in imagination in the state of the injured party. The punishment of the thief or burglar allows honest men to sleep more tranquilly, frees them from alarm, frees them from pain in addition. Here all seems to turn on pleasure and pain, on diminishing the sum of the one and increasing that of the other—a small pain inflicted on the wrongdoer to produce a greater quantity of pleasure or satisfaction or peace in society. This necessary pain or legal sanction inflicted on convicted thieves or burglars should indeed be reduced to the lowest amount necessary to effect its proper object, the object of all legislation, namely, the increase of pleasure and the diminution of pain, which all good acts and even the commands of legislators should have in view. Pain to one is only allowable to diminish greater pain to others, otherwise it is a thing that should not be, the production of superfluous evil, pain being properly the only evil. Whence it follows that punishment is only justifiable in certain cases, and in all should be as little as consists with its main end.

Now, the judicious distribution of legal punishment and reward working so well in diminishing evil, Bentham turns to what is called the moral law, and finds a close analogy with the law proper commanded by Government, and enforced by the judges or magistrates. He sees certain actions forbidden, others enjoined, with penalties in one case, with praise or good esteem, perhaps good offices, in the other. Here, then, was a further system of legislation through punishments and rewards, but chiefly punishments, mostly to compel the forbearance from certain actions, but sometimes urging the doing of actions,—the fulfilling promises, the making return for favours, the relief of distress, speaking the truth, etc. The moral law rewards these classes of actions by approbation, it punishes through pains or censure. But why inflict any pains? As before, for the general good, to increase pleasure or, say, happiness, which is both a more general word, and has a less

epicurean flavour. Now, this moral law it is supposed will extend to most or all the remaining field of actions not covered by the civil law. To this add actions which carry their natural punishments with them, such as imprudent or careless actions, and the whole field of conduct is brought under the reign of law, and law turning solely on considerations of pleasure and pain, happiness or unhappiness. All acts that we can possibly do would thus be regulated and have their appropriate sanction. The reign of law in the human world would be complete, if only the sanctions were duly graduated, were no more or less than the principle of utility required.

But this moral code, so far as operative, what Austin calls "positive moral rules" or morality, is very imperfect, indefinite, and variable with time and country. It may be as bad and as little conformable to what the standard of utility or the greatest general happiness would require, as the legal or political code. The actual moral code, the code prescribed by common moral opinion, such as is reflected fragmentarily by twelve jurymen, or even the judge who often has occasion to enunciate parts of it, as well as the civil law, may be far from perfect. It should distribute its penalties and praise according to the dictates of utilitarianism, which it is far from doing. Its commands proceed rather from general sympathies and antipathies, prejudices, fashions, varying opinions, religious or social, etc. This whole moral code required revision, so that the rewards and punishments should square with Bentham's ideal moral code, with moral legislation as it ought to be, or Deontology as he calls it, following the analogy of his complete civil code. There should be a code of morality where the law had not spoken; in the business sphere, in the professions; again, with regard to the sexual and the family relations, a general code for the common intercourse of life, a special code of honour amongst gentlemen, etc.

We ought to square our acts by such a general code, not by the actual and imperfect one of society, but unhappily Bentham did not give us the code, neither general or special, though some specimens highly displeasing to J. S. Mill appeared

after his death;[1] and therefore till the higher morality from the point of view of utility is written we must be content with the actual moral rules furnished by common opinion, and with what are called amongst the better classes the code or laws of honour, which have been reduced to more exactness. These, together with moral sense or conscience, in other cases, form our guide. We must roughly go by the rules hence derived, unless we can work out for ourselves in difficult concrete cases a more proper action conformed to the theory of utility, supposing for the moment that we accept that principle and have no shorter or better guide. The common moral rules we know. They often do agree with utility; where they do we should follow them, where they do not we should follow our own calculation of utility in the way Bentham recommends, supposing us able to make the calculation; and the moment we allow of exceptions to the common moral rules, or try to make qualifications or improvements, we shall be tempted to make them in our own favour, or to make a number of excepted cases, where we think under the special circumstances more happiness would result from a departure from the general rule, and with the result that hardly any general rule would stand. The difficulty or impossibility of following and casting up the train of consequences, of happiness or the reverse, would be so great that if we depart from the rough rule we shall be tempted to make the decision according to our private inclinations and wishes. We should make special and excepted rules in favour of ourselves, our friends, our party, political or religious, etc. The reign of Moral Casuistry destroyed by Pascal's *Provincial Letters* would return.

The case stands thus. The actual moral law is sometimes (not often) wrong or imperfect; in difficult cases, say where harm to somebody is sure to follow, whether an act be done or forborne, it gives no help; and the ideal code contemplated by Bentham has not been written. If a utilitarian, I am left to

[1] Mill affirmed that the two volumes entitled Bentham's *Deontology* were not to be regarded as Bentham's, because he had never published them; and from the Editor's own Preface it is clear that the contribution of Bentham to the volumes was small or microscopic.

myself and my calculations. Shall I not be likely to decide according to my own liking if a positive moral rule forbids, by making exceptions to it, extending these to supposed analogous cases in the way the judges make case-law? so that a general principle and rule will be lost in a multitude of subclasses of exceptions; and the matter is so much worse, as the making of the new case-law in morals would be left to an interested judge, little able to make the nearly impossible calculation required. And therefore, finally, I infer that until a good system of new moral rules is enunciated and generally approved, it would be better for us to go by the old moral opinion unless clearly against reason and conscience. For I assume conscience, since later utilitarians like Mill and Herbert Spencer allow it. But will conscience or moral sense help us any better? Yes, I think, to a considerable degree, for its express business is to be an impartial witness and impartial judge as between our claims and those of others, and *in general* it is so. "Almost any fair man in almost any circumstances," says Butler, could tell whether a contemplated act was right or wrong. Bentham, however, does not allow of the existence of conscience or moral sense, other than as part of a general bundle of prejudices, all of which he wishes to be discredited and rooted out. There is room, no doubt, to practise casuistry with one's conscience, but there is room for much more in trying to apply to conduct such a wholly impossible standard as he recommends. If our conscience, our standard, is suspected of self-partiality, as it may be, the only help is to supplement it by the impartial judgment of a disinterested and enlightened third party.

The jural view of ethics, he thought, would greatly simplify morals. It would bring all action (and even dispositions) under the dominion of reward and punishment, but chiefly the latter. It would be only necessary to have a systematic classification of wrong acts, other than illegal ones, to find the amount of punishment that would be a full counterpoise to the expected pleasure of the wrong-doing, and only apply it with certainty, and the ill deed would not be done by a rational or even a selfish man. It would die in the conception, and thus,

to vary Hamlet's words, the fear of punishment acting in place of conscience "would make cowards of us all," in case of a contemplated forbidden act. A philosophic code of moral conduct, and a philosophic code of repression, was all that was necessary to make man a moral being, just as a similar civil code and penal code would make him a law-abiding citizen. The religious in like manner may have their actions further controlled by the divine law; and the prudent by the physical sanctions, the natural rewards and punishments that follow observances or breaches of the law of prudence, and thus all the actions of man may be brought under law—religious, civil, moral, prudential.

A perfect moral world under a complete system of laws, kept in order mostly by the sanction of punishment, but also in part by a system of rewards, the *rationale* of which he gives us in another fragmentary treatise.[1] What more could a philosopher, a philanthropist, and a law reformer ask? In reality, as we have seen, his ethical theory, his whole view of morals, is inconsistent, impracticable, shallow, and unsystematic. What is new in regard to the prudent conduct of life, his calculus of pleasures, is inapplicable to practice; what is new in regard to the moral conduct of life is for the most part impracticable; while the part that is practicable has been better treated already, and much more to the point, by others. As a utilitarian, Hume is far more acute and original. In fact, there never was greater pretence with less performance than in the ethical part of the *Principles of Morals and Legislation*; never greater contempt manifested for leading thinkers, combined with less power of improving on them.

[1] Works: *The Rationale of Reward.*

II. THEORY OF LEGISLATION

§ 1

In morals, in the sphere of private life and conduct it is clear that Bentham's utilitarianism will not carry us far or be of much assistance to us. It is otherwise in politics, in the field of legislation or law-making, and in government generally. Here the standard or aim of the general happiness is both more applicable and also the juster and more reasonable aim. Moreover, in England the standard has been applied, and in the political field it has largely conquered, and largely owing to the influence of Bentham and the reforming impetus which he initiated. Our laws, both civil and criminal, especially the latter, have been improved, the judicature and the administrative machinery of justice have been reformed. The constitution and Parliament have likewise been reformed in the democratic direction so as to give the greater number a greater weight in the control of the government. Universal suffrage and secret voting, both main planks in Bentham's political platform, have come, while by the introduction of the competitive examination system, the ability of the middle class has secured a large share in the public service of the country, to the exclusion of the corrupt placemen of Bentham's time, the friends and connections and dependants of the Aristocracy or the Crown.

But though the greatest happiness test is more applicable than any other in the field of politics, it is not always easily applicable, and it does not apply without important qualifications. For, in the first place, as a nation is an entity, an organism having usually a long if not an immortal life, the

happiness of future generations, and especially of the next one or two, more closely connected in affection and interest with the existing one, ought to count. And, in the second place, as some of the happiness and even the lives and fortunes of the existing generation may have to be risked and destroyed to preserve the national existence and independence, there is here another great difficulty in applying the test of Bentham. The happiness of future generations must sometimes enter the calculations, while part of the happiness of the present must sometimes be sacrificed, though the pain of submission to foreign rule and the loss of political independence might be thought to be greater than any happiness sacrificed in resisting the foreign enemy.

But again, a nation, as a corporate entity or as a social organism, has a mental and moral life of its own, and no more than an individual can it "live by bread alone." A great nation must bear its part in the work of advancing civilisation, must cultivate the advancing sciences as well as the useful material arts, must keep in the front rank in the æsthetic arts, must aim at the best in literature, learning, and philosophy. And it must aim at all this, not so much because these things tend to increase happiness, which they do, or because they yield high or serene delight, which they do, though not resolvable into or expressible in terms of the lower forms of happiness, either intensified or long continued, as because it is in the nature of man, especially of man in civilised societies, to cultivate all these unique and different things and to endeavour to excel in them. To do so is in a measure the end of his being, even more than happiness, though their cultivation brings happiness with it, first to its cultivators and next to the far larger number to whose minds and souls they minister. But as the results can form but a small part of the happiness or spiritual food of the greatest number, it may be doubted if a government aiming solely at the happiness of the majority, would be sufficiently disposed to the encouragement and furtherance of these higher things.

Into considerations and limitations to his theory such as these Bentham does not enter, probably would not admit

them, though his disciple, Mill, presses them. According to Bentham, in the sphere of government those laws, institutions, and measures are good and right which promote the happiness of the community or the majority of it, or which produce the greatest sum of happiness to the greatest number, not the greatest happiness of an aristocracy, or of a king and an aristocracy with their dependants, as Bentham complained was the view of the ruling classes of his time. By this touch-stone he would test all our laws, civil and criminal; all our public institutions, the Monarchy, the Established Church; all institutions relating to private life and social intercourse, private property, inheritance, marriage. If they do not conform to this test, if they do not favour the greatest happiness of the greatest number, he would either abolish them, giving the necessary compensation to injured individual interests, or modify them so far as to make them conform. The fact of their existence is no justification unless they agree with the universal good. He will not defend them on Burke's ground of existence, and long existence,—of prescription, in a word. All laws and institutions, even prescription itself wherever taken up by law, must be justified on the same common ground: Do they or do they not make for the general good, including particularly the working classes and the lowest sections of these, which he sometimes calls the "labouring poor"?

He does not defend them on the ground of natural right or rights of man, which he thinks a dangerous and anarchic doctrine. He defends them solely on the ground of general utility, and it is on this very ground that he defends private property and the general principle of freedom of contract. They promote most the happiness of the greatest number, composed chiefly of the working classes.

He is very far from thinking our laws and institutions perfect. Indeed, he denounces them in the strongest and most indignant language, as being often evil and corrupt and kept so in the interest of the ruling classes. He is a born reformer, but not a revolutionist. Therein lies his historic significance. His position is between Burke and Rousseau;

and while Burke would vainly try to arrest political progress, and Rousseau would destroy what did not agree with his single dogma, Bentham would apply practical and carefully calculated reforms in law and government.

He has pointed out in his principal work, with much clearness, common-sense, and sound reasoning, where our laws need improvement, in the civil, and still more in the penal, branch. In another work he denounces the corruptions in our "aristocracy-ridden monarchy," the parasitic pensioners, the needless placemen, the nepotism, favouritism, the corrupt patronage, and he insists on a radical parliamentary reform as the only thing to stop the tide of universal corruption under which the people were being plundered, while they were oppressed. He argues in favour of such a reform as would secure democratic ascendency, because under it the "sinister interests" of ruling classes, aristocracy, lawyers, priests, could be most effectually checked.

He even favours equality of property, on the ground that the increments of happiness to rich men are not proportional to increments of wealth; that the happiness of those who receive a large revenue, such as landlords, is not increased so much as those from whom he gets it is diminished. But having lived through the time of the French Revolution, and having been deeply impressed with the economic and other lessons of that tremendous event, he is very careful to limit the kind of equality he leans to, and to point out the slow and safe way to it, by taking in time, by slowly altering the laws of inheritance, so that nothing should be subtracted from a man's fortune during his life. He does not believe in the equality of St. Just, nor that of Robespierre, who affirmed that in a well-constituted Republic no one should possess more than 300 livres a year. Bentham is too good a political economist to accept such doctrines in an age that was continually more and more requiring large capital for the new large enterprises, which required able and energetic leaders and directors, who could not be evolved without large remuneration. He sees very clearly and shows very vividly that a sustained and general attempt to bring in the reign of equality would require even a

more prodigious effort than the audacious Jacobins made in their four years' memorable adventure into chaos; that it would lead to universal poverty, and that it could only last for a day.

§ 2

So far as to the general aim and tendency of Bentham's utilitarian philosophy. Let us enter now into some of the details of his chief book, the *Principles of Legislation*: and first as regards the main ends of government.

The true aim of law and government, of the enlightened statesman and legislator, is the greatest happiness of the governed; and as to this, with certain qualifications, political philosophers are largely agreed. And wherein consists their happiness? Chiefly, according to Bentham, in four things—subsistence, abundance, equality, and, above all, security; under security, liberty, civil and political, being included. The end of the civil laws should be these four things, and of these four chiefly security, the protection of the person and of property, the fruit of the labourer's exertions.

As to subsistence, no laws are required; the physical sanction alone, the natural consequences, sustenance or starvation, are amply adequate to induce men to labour, provided only that the fruits of labour are secured to the labourer by the laws against spoilers (including the rapacity of the government's own agents). Subsistence, the first end of law, is thus secured. As to abundance, the same principles apply, since abundance is produced through the operation of the same motives as those which produce subsistence, or at least similar motives. Above all, it is promoted by the spirit of saving and accumulation, with the hope of employing these accumulations to produce additional wealth with a profit. In the economic sphere of production no laws are necessary, and the fewer regulations of industry the better. Those concerned know better than any government what favours production. Regulations and laws may indeed hinder and diminish production, as in former times they often did. The State here can do nothing but protect the labourer, and secure to him his fruits; but this

is a real and an immense service, in doing which they have perhaps done everything.

But a question arises here not treated by Bentham. How are we to measure the fruits of labour when the labourers are working for an employer, and not for themselves, as in manufactures or mining or commerce? Again, how much of the fruits of labour of a small farmer, say, should go to the landlord? So that to assure the fruits of labour to the labourer is not quite so easy as would appear. It is roughly settled in the first case by contracts for hire at so much wages, since it is impossible to say how much is the fruit of an individual's labour; and in the latter, also by contracts, which usually transfer to the landlords any excess of farmers' profits over the ordinary rate. But who can say that the exact fruits are secured to the labourers in either case?

As to the next alleged end of the civil laws, namely, equality—that is, social equality and equality of property—it is, Bentham argues, a right and proper aim of government (as Rousseau had contended), and one that can be demonstrated as surely and clearly as a theorem of mathematics; but not by the vicious methods of reasoning of Rousseau, which postulated original equality, and assumed and required that this primitive state should be restored.

The equal division of wealth, Bentham thinks, would produce the greatest amount of happiness on the whole; his chief argument being that the happiness of the richer ones is not so much increased as the happiness of the poorer sort is diminished by the unequal distribution. This depends on the well-known principle that increase in wealth is not followed by a proportionate increase in happiness, though it may add something to the happiness. Put, says Bentham, on the one side "a thousand farmers having enough to live upon and a little more. Put on the other side a king, or, not to be encumbered with the cares of government, a prince well-portioned, himself as rich as all the farmers taken together. It is probable, I say, that his happiness is greater than the average happiness of the thousand farmers, but it is by no means probable that it is equal to the sum-total of their happiness, or, what amounts to the same

thing, a thousand times greater than the average happiness of one of them. It would be remarkable if his happiness were ten times or even five times greater." This is undoubtedly true and less than the truth, for he may not even be so happy as a man with an assured competence in a congenial pursuit. Accordingly, if the law took from the richer a part of their superfluity, which adds so little proportionately to their happiness, and which would certainly greatly increase the happiness of the poorer sort, or in this example the thousand farmers, the legislator would increase the total area of happiness. And it would be better to spread it equally over the thousand, on the same principle that if one farmer got twice as much as another his happiness would not be so much increased as another's would fail to be increased. And this is certainly a true argument, so far that all in a community should have the necessaries of life assured to them if destitute; but which could not be pushed so far as Bentham pushes it, that an equal division all round would assure the greatest quantity of happiness, since the certain result of the policy after the plunder of the rich would be, in future, diminished savings, diminished production, no abundance, and soon not even subsistence; an equality in poverty and misery instead of increased happiness. But not by any means, though he uses a fallacious argument in favour of it, does Bentham wish for an actual experiment in the direction of equality. The actual distribution that everywhere exists, he thinks, should remain undisturbed, otherwise security is attacked, and security is of far more consequence than equality. Indeed, no one has more vividly depicted than Bentham the certain results of an attempt to introduce and maintain a régime of equality, as we shall see a little later.

§ 3

Security is a much better end for the legislator to aim at than equality, and in the case of a conflict between the ends the former should always be preferred. By security is meant not only security to the person, including reputation, but also and still more to property. Security, "that inestimable good,

the distinctive index of civilisation, is entirely the work of law. Without law there is no security; and consequently no abundance, and not even a certainty of subsistence; and the only equality that can exist in such a state of things is an equality in misery."

To show the benefits of law and civil society in which it first appears, he draws a picture of man in the state of nature or the savage condition (and then of what happens during a state of war, "when civilised society returns almost to the savage state"). "The savages," he says, "strive incessantly against famine; which sometimes cuts off entire tribes. Rivalry for subsistence produces amongst them the most cruel wars; and, like beasts of prey, men pursue men as a means of sustenance. The fear of this terrible calamity silences the softer sentiments of nature; pity unites with insensibility in putting to death the older men who can no longer hunt."

He then points to the destruction of wealth that takes place during war, when the laws on which security depends are in part suspended; and both passages remind us of Hobbes' account of the evils incident to the state of nature to which the savage condition corresponds, only that in the second case Hobbes more appositely mentions "civil war," where there is a nearer approach to a state of nature in the lawless condition of "masterless men" than in international war. It is law alone which has raised us above the savage state in respect of the security of person and property. Morals alone, all the natural sentiments united, would have been insufficient, he tells us, as Hobbes has already told us.

"Law alone is able to create a fixed and durable possession which merits the name of property. Law alone can accustom men to bow their heads under the yoke of foresight, hard at first to bear, but afterwards light and agreeable. Nothing but law can encourage men to labours superfluous for the present, and which can be enjoyed only in the future. Economy has as many enemies as there are dissipators—men who wish to enjoy without giving themselves the trouble of producing. Labour is too painful for idleness; it is too slow for impatience. Fraud and injustice secretly conspire to appropriate its fruits.

Insolence and audacity think to ravish them by open force. Thus security is assailed on every side—ever threatened, never tranquil, it exists in the midst of alarms. The legislator needs a diligence always sustained, a power always in action, to defend it against this crowd of indefatigable enemies."

But it is not enough to be secure against actual loss for the day. We want to have the morrow secure and all our morrows, like him in the Gospel parable who had much goods laid up for many years, so that, like him, we may take our ease. It is only law that can give this feeling of future security. All future "*expectation*" is grounded on law; our confident expectations enable us to form plans for the future. "It is hence that the successive instants which compose the duration of life are not like isolated and independent points, but become continuous parts of one whole. *Expectation* is a chain which unites our present existence to our future existence, and which passes beyond us to the generation which is to follow. The sensibility of man extends through all the links of this chain."

What a serenity, peace, comfort, good laws may procure for us; laws well administered and protecting our property, which enable us quietly to carry out the schemes of life which we may plan beforehand for ourselves and in part for our children! What dangers, losses, disappointments, anxieties, cares, and troubles we are spared!

All this we owe to law; and yet, Bentham complains, the "word *expectation* is scarce to be found in the legal vocabulary, and scarce an argument founded on that principle appears in their writings."[1]

But now, if law has been so potent a machinery and so efficacious, surely some account, in a professedly scientific and original treatise on law, of the origin of this wondrous device, is necessary. In what form did it first appear? Did it come into the world complete and fully formed, like Pallas from the brain of Jupiter? Did it come from heaven-sent legislators who

[1] This may be partly true as regards lawyers; but Burke as a political thinker and legislator has some powerful arguments based on the impolicy and injustice of laws and measures of State that defeat plans of life that the State has encouraged men to form (*supra*, p. 130).

furnished complete codes? or, as Hobbes and Locke asserted, did it begin on the day when the original social contract was made, and when one man or one body was intrusted with the power to frame laws to govern the rest with their consent? After it came, how was it changed or improved? We merely note here questions unanswered or answered most imperfectly, which, according to Sir Henry Maine and the modern historical school, require to be answered as fully as possible—the questions of the origin and progress of law; otherwise we are presented with the mystery of a most excellent device and great discovery for society, the condition of all other excellences, without having the origin and successive improvements pointed out and explained.

§ 4

In order the better to see the advantages of law we should try, he tells us, to get a clear idea of property. This is not easy, because "there is no image, no painting, no visible trait which can express the relation that constitutes property. It is not material, it is metaphysical; it is a mere conception of the mind."

The chief element in the idea of property consists in "an established expectation" in the persuasion of being able to draw certain advantages from the thing possessed, an expectation wholly based on the guarantee of law. To take the simplest case (and the one chosen by Rousseau), it is only through the protection of law that I am able to enclose a field, and to give myself up to its cultivation with the sure, though distant, expectation of harvest.

There was, no doubt, a *natural* expectation of enjoying things even before law existed. But the cases are very few and elementary: a savage (a hunter or a fisher) may hope to enjoy the fruits of his labours, if, for example, he has killed a deer, if other savages have not discovered his cave, or if he is stronger when they come to take it from him, as they will be likely to do (as Hobbes has said). But if you dispute this, and we are to suppose an agreement amongst savages to respect the acquisitions

of each other, here we have in these agreements the BEGINNINGS OF LAW[1] as being the best for all in the long-run.

Property and law are born together and die together. Before laws were made there was no property; take away laws, and property ceases.

Security in relation to property consists in the Law not defeating expectations of enjoyment which it has itself encouraged men to form, and the rights which it has guaranteed.

But perhaps laws of property are *good* for the rich, *bad* for the poor, as Rousseau and our modern communists have said. This is not so, Bentham thinks, for the poor man is much better off in our societies than the savages in the condition of nature; the lot of women is better, and childhood and old age have more resources; the population is a "thousand times greater," a fact which alone proves on which side is the superiority in happiness (if life is worth having at all).

"The laws in creating riches are the benefactors of those who remain in the poverty of nature. All participate more or less in the pleasures, the advantages, and the resources of civilised society. The industry and labour of the poor place them amongst the candidates of fortune. And have they not the pleasures of acquisition?" This is certainly true in *part*. But perhaps the real question rather should be whether the labouring class generally have *duly* shared in the blessings of civilisation, and whether their material condition has improved in proportion to the general increase of wealth in modern times. The labouring class are certainly far better off than they would have been had there been no laws protecting property; but have they shared in the new wealth and in the conquests of civilisation as much as the other classes? The answer is, that they have shared the new wealth, and an ever larger number of them; the level of wages having continually risen during the past hundred years. But they have not shared in those things that presuppose a liberal education as a necessary condition of their enjoyment. Nor is it possible or in the nature of things the majority of them can do so, but

[1] Of customs rather, which is a stage before law. Locke believed men were ruled by such customs, and Rousseau followed him on this point.

only some of them, who are more fortunate than the rest, or naturally abler or cleverer. But, finally, they are infinitely better off than they would be under a system of equality or Communism, or even what we now call Collectivism; all this in spite of what the Marquis Beccaria has said: "The right of property is a terrible right, which perhaps was not necessary." Rousseau has said the same, but, as I have already said, he afterwards changed his opinion.

But, short of its abolition, short of communism, property may be attacked. Bentham then analyses the evils which result from such attacks. These are, first, the evil of non-possession —a negative evil; secondly, the pain of losing—a positive evil, the pain of deprivation. It is, as it were, taking away a part of myself—summing up the cares, the industry, the saving spirit and foresight, all which are objectified in the property, which is likewise the reward of all these efforts. "Our property is thus a part of our being, and cannot be torn from us without rending us to the quick."

Besides, after being once attacked, there arises inquietude as to the remainder, and, worse yet, as to what we have not yet acquired, but which we may acquire if allowed to keep and enjoy. This fear is formidable and widespread, and it has very extensive consequences. For why save and labour if the fruits are torn from me to the profit of others, "my enemies"? Besides, I may not have the means (capital) left, even if I desired still to labour. Of those four evils, the first and second do not extend beyond the particular persons plundered. But the third and fourth extend to those not yet attacked, that is, to everybody else. The alarm and the deadening of industry extend to all, and of course are all the greater the more persons have already been attacked. A whole nation may in this manner have the spirit of industry deadened permanently by a tyrannical government, bad legislation, an intolerant religion, which drives men from the country, or "a minute superstition which stupefies them." The provinces of the Turkish empire, formerly under Roman rule, so flourishing, according to Bentham, have been impoverished solely by bad and rapacious government.

In such countries the opulent are first plundered. At length only what is necessary for bare subsistence is produced. But abundance being plundered, even the subsistence of some is endangered, owing to the fact that the superfluity of the rich is held as a fund for the subsistence of others.

Turn to the other side of the picture and see what a grand result has been achieved in North America. A whole continent reclaimed from a savage uncultured state, and wealth and commerce and population vastly increased, and all this within barely two centuries. What has wrought these prodigies? "The beneficent genius is *security*."

§ 5

The existing distribution of wealth in each country, however it may differ in different countries, should be preserved by the legislator. Justice consists in its maintenance, and the great principle of security requires it. "How make another distribution without taking from each that which he has? And how despoil any without attacking the security of all? When your new repartition is disarranged—that is to say, the day after its establishment—how avoid making a second? Why not correct it in the same way? And, in the meantime, what becomes of security? Where is happiness? Where is industry?"

"When security and equality are in conflict it will not do to hesitate a moment. Equality must yield. The first is the foundation of life; subsistence, abundance, happiness, everything depends upon it. Equality produces only a certain portion of good. Besides, whatever we may do, it will never be perfect; it may exist a day; but the revolutions of the morrow will overturn it. The establishment of a perfect equality is a chimera; all we can do is to diminish inequality."

A revolution in government or a conquest might overturn property, and they have occasionally done so, but it would be only for a time. Soon industry would create new property, if only the principle of property be allowed. "But if property should be overturned with the direct intention of establishing

an equality of possessions, the evil would be irreparable. No more security, no more industry, no more abundance! Society would return to the savage state whence it emerged." May our Collectivists and extreme Socialists of to-day, who have become enamoured of communism, meditate these words of Bentham, the democrat and extreme Radical!

He goes on to show in remarkably vigorous and earnest and convincing words the conditions necessary to carry out a scheme of equality as well as the eventual consequences of it:—"If equality ought to prevail to-day it ought to prevail always. Yet it cannot be preserved except by renewing the violence by which it was established. It will need an army of inquisitors and executioners as deaf to favour as to pity; insensible to the seductions of pleasure, inaccessible to personal interest; endowed with all the virtues, though in a service which destroys them all. The levelling apparatus ought to go incessantly backward and forward, cutting off all that rises above the line prescribed. A ceaseless vigilance would be necessary to give to those who had dissipated their portions, and to take from those who by labour had augmented theirs. In such an order of things there would be only one wise course for the governed —that of prodigality; there would be but one foolish course —that of industry. This pretended remedy, seemingly so pleasant, would be a mortal poison, a burning cautery, which would consume till it destroyed the last fibre of life. The hostile sword in its greatest furies is a thousand times less dreadful. It inflicts but partial evils, which time effaces and industry repairs."

These words are not more striking than true, and the imperfect attempt made in France for some three years to realise equality confirms them, while the march of social and industrial evolution and the greater scale and complexity of social facts would render any similar attempt now made still more disastrous, if possible, than in Bentham's time.

It is true, he goes on to show, that some small societies in the first effervescence of religious enthusiasm have established communism and equality, but by no means to their increased happiness at first, while they tend in the end to the simple

"robbery which idleness perpetrates on industry." Ideas of benevolence have induced some good people to countenance such chimerical schemes. But under them in the distribution of labour "what motive could determine any to embrace the more painful? Who would undertake gross and disagreeable functions? Who would be content with his lot? Who would not find the burden of his neighbour lighter than his own? How many frauds would be contrived in order to lay upon others the labour from which all would endeavour to exempt themselves? And in the division how impossible to satisfy all; to preserve the appearances of equality; to prevent jealousies, quarrels, rivalries, preferences. . . . What an apparatus of penal laws would be necessary as a substitute for the sweet liberty of choice and the natural recompense of labour! One-half the society would not suffice to regulate the other half. Thus this absurd and unjust system would only be able to maintain itself by means of a political and religious slavery such as that of the Helots of Lacedemon and the Indians of Paraguay in the establishments of the Jesuits. Sublime invention of legislators which to accomplish a plan of equality makes two corresponding lots of good and of evil, and puts all the pain on one side and all the enjoyments on the other!"

There is only one means, he thinks, of reconciling security with greater equality. The State can limit the testamentary power, "to prevent too great an accumulation of wealth in the hands of an individual," or it may favour equality where the deceased has left no consort or relation in the direct line, and has made no will, in which case the property should revert to the State, to the exclusion of collaterals, who will have formed no expectations; while if there are children in the direct line the principle of equal division should be followed.

The first of these principles, the limitation of the testamentary power, has been to some extent adopted by Parliament in the graduated taxation of legacies and successions, though it has not been done with a view to promote greater equality, but only to provide an easily raised and fruitful tax. Of course to some extent it does favour equality, and by deepening the graduation it could be made to favour it still more. But it is a

very delicate and difficult question, how far such increase would lead to evasions, or much worse, to a check on the accumulation of capital by the testator during his life, which would also tend to equality, but equality at the expense chiefly of the working classes.

According to Bentham, there is a natural tendency to equality in a nation industrially progressive, if the laws do not set themselves against it by favouring monopolies, shackling trade, or permitting entails. "We see great properties divided little by little without effort, without revolution, without shock, and a much greater number of men coming to participate in the moderate favours of fortune." This is certainly in part true. Without primogeniture and entails the great landed properties would have been divided long since, but there is an opposite process going on all through our century until lately—an increasing concentration of capital in single hands. This implies a great increase in inequality of wealth, and there are certainly a far greater proportion of men in the industrial world who have incomes of over £5000 a year, over £10,000, even over £50,000 a year, than when Bentham wrote in the beginning of the century.

It is true that nearly every class and calling has shared in the great increase of wealth during the past hundred years, but in particular a large new class of very rich men has been added to our social types, and this class has profited more than any other, so that we cannot accept without qualification Bentham's formula "that there is a continual progress towards equality." Up to a recent time, and especially during the first half of the present century, in the industrial sphere the tendency has been the other way, and with benefit on the whole to the nation and especially the working classes.

§ 6

The principle of security is not infringed by the State taking a part of my property for the public wants, because there are cases where a part must be sacrificed to preserve the greater mass, as, for example, for the expenses of the army, navy,

police, justice. But there are disputable cases: should a part of anyone's property be taken to support the indigent or to support public worship, or for the cultivation of the arts and sciences? In an excellent section he pleads decisively in favour of a poor-law to provide for the indigent, because, though all poor-laws to some extent encourage idleness, yet there are much greater objections to their abolition. Savings of the labourers themselves cannot be depended on, because a large class of labourers have not got enough for subsistence, another large class only just enough, and it is only the class above these two which could reasonably be expected to make a provision for themselves when old and past their labour, which many fail to do through imprudence.[1] Then a system of voluntary contributions has great imperfections. The contribution, uncertain in amount, may be in excess or insufficient. It is levied only on the humane. There is a premium on avarice and selfishness which can escape the contribution, and a "punishment on humanity, that first of virtues." Thirdly, these voluntary levies are badly distributed. The shameless or lying or cunning or importunate mendicant will fare well, while the modest and virtuous poor, or those ashamed to disclose their poverty, may be put to terrible privations. For these reasons, "the legislator ought to establish a regular contribution for the wants of indigence," but those only are to be considered indigent who are in want of what is absolutely necessary. To this the poor have a claim greater than the rich to their superfluities, owing to the greater pain, amounting soon to the pains of death, which would fall on the starving poor, while the privation to the rich would be but a trifle or nothing at all. But not more than necessaries should be given, otherwise it is a case of "taxing industry for the support of idleness." From all which it may be inferred that Bentham, though he might favour a reformed poor-law, would not be much in favour of Old Age Pensions to any except the deserving labourers, who had served society during their working years without having the means of providing for their old age.

[1] Or even through their virtues, *e.g.* in assisting aged parents or other relations.

As to payment of the clergy out of the public Treasury, he is not opposed to it, because the clergy are useful; "they form the advanced guard of the law." Their functions might be increased with advantage; they might do more for the education of the lower classes in the promulgation of the laws (as Hobbes suggested) and in other ways—services which would keep them from dogmatism and controversy, where their labours are mainly mischievous. If, however, there are a variety of religions and forms of worship, it would more consist with liberty and equality that each denomination should contribute to the support of its own clergy and worship—a course which might encourage proselytism, but which more likely would result in a useful emulation.

He is not averse to the public contributing to the cultivation of the arts and sciences, the fine arts as well as the useful, because, first, the expense would be trifling; secondly, its levy being mixed up with the necessary taxes, would be imperceptible; thirdly, an advanced state of the fine arts might draw strangers to the country, and also, as in the case of Greece, gain the good esteem of other nations.

He enumerates[1] the *attacks upon security* (of property) through ignorance or false theories.

Such are — (1) Taxes which spare the rich and fall on the poor, as the *corvée*, taxes on industry, upon necessaries, private sales, public sales, taxes on law proceedings, which, in effect, deny to "the poorer sort" the protection of law.

(2) Forced elevation of the value of money by the government or making its payments in a depreciated or debased currency; a theft by the government which enables every other debtor to rob his creditor, and which has many further disastrous consequences.

(3) Reduction of the rate of interest by law (an operation analogous to the reduction of rents), on the ground that landlords are useless consumers and tenants productive labourers, both of which seriously shake the principle of security for all classes of citizens.

[1] *Principles of the Civil Code*, chap. xv.

(4) General confiscations for political crimes, such as prevailed formerly in Rome, or in democracies the plunder of the rich on the pretext that their fortunes were generally founded on injustice. These four are more important, and have been more frequent.

He adds (5) Dissolution of convents and monastic orders other than slowly, and (6) Suppression of possessions and places without indemnity to the possessors.

§ 7

There is a good concluding chapter in the first part of the book on the "power of the laws over expectation." Laws should conform to the general expectation. Their goodness depends upon this. The conditions of this conformity are: first, that the *laws should be anterior to expectation.* But this is difficult, for even at the beginning of laws there was already some expectation formed, because prior to laws there was a "feeble kind of property," and a sort of expectation of preserving it.

If it be ever necessary to make a law contrary to the expectations of men, it should be a law to take effect at a remote period, so that the present generation would not feel the change, and the coming generation would be prepared for it. You will thus not hurt existing interests, and amongst the young you will find supporters. "Everything will be easy, because you will have prevented the birth of expectations which otherwise you would have been compelled to contradict." The second condition is that the *laws should be known,* because otherwise they can have no effect upon expectation, nor even prevent a contrary one. Laws are more easily known as they conform to *natural expectations* produced by previous habits; but a law contrary to such expectations is hard to comprehend, and more hard to remember. We do not naturally expect codes of ritual law, but we do expect those laws which are most important and necessary. Therefore the stranger who commits a theft, a forgery, a murder, may not plead ignorance of the laws of the country, since he must have known that these were crimes

everywhere.[1] Thirdly, *the laws should be consistent*, a principle closely connected with the preceding, because analogous laws, which consist with the preceding principles, are presumed beforehand.

That a man's property should on his death go to the next of kin is a rule generally admitted, and a law directing succession according to this would accord with natural expectations, and be universally understood. The more the law departs from this principle and admits exception, the more obscure and difficult it is to understand. The English common law affords a striking example of such departure in its complicated provisions, singular distinctions, and subtle judicial decisions regulating the descent of property, which are of such peculiar kind that no one could presume them beforehand. The result is that this part of the law is "a profound study like that of the most abstract sciences, confined to a small number of privileged men. It has even been necessary to subdivide it, for no lawyer pretends to understand the whole of it."

The fourth condition is that *laws should be consistent with the principle of utility*; for expectation naturally presumes utility. True, what conforms to utility may be contrary to public opinion, but this is only accidental and temporary. The fifth condition is *method in the laws*, good arrangement, otherwise there may be a difficulty in understanding and remembering them. "Both the style and method should be simple; the law ought to be a manual of instruction for each individual, and everyone should be enabled to consult it in doubtful cases without the aid of an interpreter,"—a consummation devoutly to be wished, and which Hobbes in his *Leviathan* had pointed out as a desideratum, but which we are as far as ever from attaining. Perhaps, as Sir Henry Maine points out, it may not be so easy as Bentham supposes to make the law cognoscible to

[1] In like manner in Roman law, none, even those to whom ignorance was allowed as a plea, could plead ignorance when the act forbidden was contrary to the Law of Nature. But how could the stranger know that they were crimes everywhere unless from his moral nature? for we must not assume that he is necessarily a believer in Bentham's theory of utility. In fact, all that he says here about "natural expectations" is an unconscious testimony in favour of Natural Law.

the generality, owing to the increasing complication and difficulty of facts in our increasingly complicated modern life.

There is a sixth condition in order to control expectation. The law ought to appear to the mind as *certain to be executed*, or at least there should be no reason to presume the contrary; a rule which condemns a multitude of mercantile prohibitions, because the rules are easily eluded, with the result that they "become a lottery of immorality, in which individuals stake money against the legislator and the custom house."

The seventh and last condition requires that the laws be literally followed, that the literal sense of the words be taken, and not the interpretation of the judge, who might put quite a different sense on it, and who, under the pretence of interpretation, may substitute his will for that of the legislator, while at the same time he may make suitors liable to his caprice or partiality.

Such are the marks of good laws: utility, consistency, facility of being known, probability of execution. If now the laws which concern everybody were in one volume, and those which concerned only classes were in small separate volumes, if the general code had become, as with the Hebrews, a part of worship and a manual of education; if a knowledge of it were required as a condition of the franchise, the law would then be truly known, every citizen would become its guardian, its violation would not be a mystery, its explanation would not be a monopoly, and fraud and chicane would no longer be able to elude it.

Further, as Hobbes also desired, the style of the laws should be as simple as their provisions, or if it differed from that of other books it should be by greater clearness, familiarity, and precision, because it is designed for all, and chiefly the least educated class.

Our laws, indeed, are very different from the model he has sketched. But in spite of that fact he affirms that, with all their drawbacks, they have produced incalculable good. We are indebted to the laws, such as they are, for all we enjoy of security, property, industry, and abundance; for peace between the citizens; the sanctity of marriage, and the "sweet perpetuity

of families"—a high and for the most part a true eulogium, but which, in his *Judicial Procedure* and elsewhere, he considerably attenuates.

§ 8

There follows Part Second on the distribution of property, in which he first enumerates the titles to property, namely, actual possession, which includes the right of the *first occupant*, ancient possession in good faith, or prescription, possession of the contents of land and of its produce, possession of what the land supports, such as animals (*accessio* of the Roman law), or what chance has thrown upon it, possession of adjacent lands which gives a claim to land from which water has retreated; amelioration of one's property, possession in good faith with amelioration of another's property. To these he adds the right to fish in great waters, and to hunt on appropriated grounds; but not the latter when most of the land is cultivated, there being reasons then against this right of chase in the various inconveniences of allowing it,—in particular that of encouraging a class of hunters likely to be poor, and tempted to breaches of the law.

A title to property is also acquired by the owner giving up its enjoyment to another, either as a pure gift or in exchange, or to ward off an evil, or to acquire goodwill. Every such alienation is a good to both parties, the giver and receiver. But there are exceptional cases where exchanges may be invalidated owing to concealment, fraud, coercion, subornation, error of law, or error of the value of the articles exchanged, incapacity to make the exchanges, inconvenience to the public, want of right on part of the conferrer.

Alienations in general are good, yet restraints on alienation of land everywhere prevail, and for three causes,—to prevent prodigals from parting with it, to support family pride, and to gratify the love of power, the desire of ruling after death; the latter being the cause of all foundations.

A title to property is also acquired by succession after death to the goods of another, and this by the law of intestate succession as well as by the making of testaments. Bentham

objects to the existing law of intestate succession, and proposes one of great simplicity, intended to favour equality, the chief feature of which is that the children should take in equal shares, and, failing children, that the immediate ascendants, father and mother, should take equally, and, failing them, that no more remote ascendants or collaterals should inherit, not even the uncle, but that the public treasury should benefit. Collateral relations may be poor, but no expectations have been formed by them, and so no injury would be done them. The section on testaments is a good one. He is in favour of freedom of bequest on account of its utilities, its promoting of virtue in families, and for the benefits it secures to the party who can make a will, which secures the respect and gratitude of children to parents in the decline of their life. Still he is partly in favour of the French *légitime* (derived from Roman law), by which no child can be disinherited, but must have a portion secured unless for grave causes specified and proved.

And if a man have no near relations, but yet wishes to benefit a faithful servant or dear friend, he would allow a certain liberty of bequest to the extent of at least one-half of his property, while the other half is reserved to the public, otherwise you tempt such a man to spend his money before his death upon himself.

There follows a short chapter on the rights to services, in which he proposes to make it an offence not to render a service to another, of great benefit to him, which would cost very little to the doer, and in which also he treats briefly of contracts and the considerations which make them invalid, which are the very same as those which make exchanges invalid, and for the same reasons. As every exchange of property imports an advantage, so every exchange of services is mutually advantageous. He concludes by contrasting his doctrine of obligations resting solely on utility with the long and laboured accounts of previous philosophers resting on natural rights, conscience, etc.

He is very much against tenancy in common, and rejoices at the division of the commons of England, where "harvests, flocks, and smiling habitations have succeeded to the dull sterility of the desert."

§ 9

We have now given the reader all of the work which specially concerns our subject of political and moral philosophy. What follows concerns the student of law chiefly, the part which relates to the rights and obligations which belong to the several private conditions, or what is called the Law of Persons. It is easy and readable, but there is not much new and important in it except where he asks for greater freedom of divorce on the grounds of his principle of utility. The remainder of the book, entitled the Principles of the Penal Code, containing his classification of offences, his remedies against offences, his theory of punishment for offences, with the indirect means of avoiding them, though well deserving the careful study of the philosophical lawyer, the law reformer, or even the special student of jurisprudence, does not much concern the class to whom these pages are addressed or the subject of which it mainly treats. It is rather the civil law, and especially that part which deals with ends of civil government with which we are concerned. Of this I have given the reader a rather full analysis, but a comprehensive review of the whole is desirable, and may be instructive to the serious student.

According to Bentham, legislators should aim at the happiness of the community, more precisely at the greatest happiness of the greatest number. But happiness, from the legislator's point of view, consists of four things—subsistence, abundance, equality, and security. As to the two first the task is easy; nothing is necessary but to leave alone. Do away with all existing restrictions, regulations, shackles on foreign trade or home industry. Leave those chiefly concerned who best know their own interest to follow it as they please, and by so doing (in the industrial sphere) they will best promote both their own interest and the general happiness.

Such was the teaching of Adam Smith, adopted by Bentham and English statesmen during the early part of this century. There was much truth in it, but also errors which time disclosed even before Bentham's death, in 1832. It led to great evil, to oppression and cruelty to the young, to the degradation

and physical deterioration of the labouring population in factories, workshops, mines, etc. And hence there came a call for regulations of a new kind and interferences with freedom of contract, limitations of working hours for women and children, and factory legislation generally.

It thus appears that, both by interfering and by not interfering, Government in the economic sphere may diminish the general happiness, and that it requires a very skilled interpretation of history and experience to know what laws to make and what to avoid, though it might be agreed that the tendency to advance the general happiness is the test, however difficult it be to trace and to measure it.

Setting aside, then, these first two objects, we come to the great aim of government, the promotion of security—security for the person, property, reputation, political liberty being included under security. Government should protect property, and he gives excellent reasons why it should. But how does it protect property? By creating legal rights that are for the general good; rights to use, in many cases to exclude others from using, to give, to alienate, to destroy, to bequeath within limits. But how can Bentham tell against the communists, without history and the long human experience, that these rights are for the happiness of the greatest number? It is history that best shows that communism is impossible with all advancing communities, and this conclusion is fortified from principles of human nature which show an instinctive tendency and leaning to property, as well as to freedom of contract.

The historical aspect of the question, how far the universal human experience has shown property to be necessary, Bentham has not examined, or only glanced at it in the exceptional case of the monasteries.

The other and greater gap in his theory of legislation lies in his denial of natural law and natural rights. He distinctly affirms that these are "fictions"; though he speaks of "all the general inclinations of men, all those which appear to exist independently of human societies, and from which must proceed the establishment of political and civil law," as properly called *laws of nature*. All legal rights he affirms to be

the creations of law, of the sovereign, without which they have no existence, or such a feeble and momentary existence as to amount to nothing. Though it is certain that nearly all rights now called legal have existed and been protected under a régime of custom before law or the State, in Bentham's sense, existed. Custom, he would say,[1] is a kind of elementary law; but why are the customs as to property so much alike at all times and places, if not because men's natures are fundamentally the same and their circumstances with respect to providing themselves with sustenance from the earth very similar? A "feeble and momentary expectation" of property he allows may have existed before law; as well he might, Locke, and even Blackstone, having already said as much and more. He gets no further than Hobbes, who declared that property was the creation of law. But Hobbes believed in natural law and natural rights, only that in the state of nature they were overridden in the universal reign of might, so that they became of none effect, were worth nothing till the State and a common coercive power was formed, when some of the natural rights that already potentially existed, though overborne, were taken up by the sovereign, defined and protected by the law, and in that sense were "created."

The real fact is that the legal rights are based on earlier natural rights—rights to property, liberty, reputation, marriage, fulfilment of contract, and family rights; rights which each one instinctively assumes, which others instinctively recognise as natural (though they may occasionally violate them); at first instinctively felt and acted upon, but later on consciously perceived and reasoned upon, being specially involved in a unique, implanted feeling, the original germ of justice. "This land is mine," as the first discoverer or first possessor; "This bow is mine," because I have spent my labour and time in fashioning it — feelings rather vaguely felt than reasoned about, or expressed in distinct, logical propositions, but which are so instinctive and immediate that the attempt to disturb possession was instantly resisted, while it aroused another and very distinct feeling of resentment, a sense of

[1] *Theory of Legislation*, p. 113.

injury or wrong done, and a desire of punishment; in fact, all that law afterwards builds upon in taking the protection of property and redress for violation of its rights into its hands.

To harmonise our natural sentiments of justice with the real good of the community is thus the great and formidable problem for the legislator, in the solution of which he will not get much help from Bentham's theory of legislation, founded solely on utility and the denial of natural rights, nor much even from his disciple Mill, who is, however, so much better than his master that he recognises that there is a justice founded on nature, on the sentiment of resentment wherever injustice or injury is done, the sense of justice being merely our natural feelings of resentment "moralised."

The true statesman in his laws and measures should have in his mind both the clearest and best sentiments of justice of his age and his community, and also the probable advantages, the amount of happiness that may be expected to follow; but this he will not gather from Bentham's absurd calculus of pleasure and pain, but rather from extensive knowledge of the results of like measures in the past, combined with a wide knowledge of human nature. And he will also have to include the happiness of posterity, for we owe much to our progenitors, which can only be paid not to them but to posterity, and thus with the widest knowledge and best intention he may blunder; there is therefore more need for caution, for tentative and slow reforms, instead of larger attempts involving too great risk.

It cannot be said that he will learn much from Bentham on these points, beyond the necessity of protecting property in the general interest, the limitation of the power of bequest, the warning against too much interfering in the economic sphere, and the need for legalised poor relief. But in regard to the penal branch of law and the theory of punishment, Bentham has been of service to legislators and reformers of the criminal law in the past, while, as regards reform in Procedure and the Administration of the law, his unceasing labours and unsparing censure and criticism have resulted in great benefits to the public in general

Thus, then, legal rights are not the creation of law, but are or ought to be the recognition of natural rights and natural justice, which often existed in part before law as a fact, and which, if they did not exist, ought to have existed, so far as we think the world ought to be a moral one, ought to be a theatre in which our highest and clearest intuitions of justice are to be realised, though there may be impediments in the way which prevent a realisation other than slowly.

So that, finally, what the legislator ought to aim at is natural justice checked by considerations of utility. He is not directly to aim at the greatest happiness of the community, which he may be uncertain how best to promote. He must be advised by history, and by the best political and economic science, if he would know whether a proposed law or measure would promote or retard the general happiness. And he must ask how far a proposed law or measure agrees with the advancing ideas of justice, as shown to the best moral thinkers. On either side he may make a fatal mistake, run counter to the accumulated experience and teaching of history, of what always has been and presumably always must be, as distinct from her other warnings against false theories of national good in the past, whether referring to religion or regulation of trade, which should best be left alone. In this way he may bring disaster or slow decay; on the other side he may run counter to our ideas of justice and natural right, and thereby teach the people the lesson, especially dangerous in a modern democracy, that might, not justice, is right; the might being identified with numerical majority.

§ 10

In the *Principles of Legislation*, Bentham had intended to set forth the principles of an ideal code, civil and penal; and if a constitutional code and an international code had been included, we should have had a complete scheme of jurisprudence, of an ideal jurisprudence or model, to which actual codes or actual bodies of law, if codified, should conform.

There had long floated before his mind such an exhaustive scheme of a complete code of laws, together with subordinate codes, maritime, military, ecclesiastical. This code was to apply to all countries, with slight local adaptations. It would only require slight changes with the progress of time. This scheme he never worked fully out. But a sketch of it in some directions, going into considerable detail, was published in Dumont's edition (1802), and edited more fully by Bowring in the complete edition of Bentham's works.

It is simply an unfinished work on jurisprudence, saving only that he draws sometimes on actual English law, sometimes on his own logical faculty. It is, so far as it goes, a model skeleton of what the law ought to conform to everywhere; and when he applied, as he did in so many directions for employment, to the Czar of Russia, the President of the United States, and the several governors of the several States, what he intended to do was to fit their actual laws into this scheme so far as possible. But it is easy to see that they would have required adaptations in the different cases, especially as he wished in his actual codifications to introduce a running accompaniment of reasons, all founded on the principle of utility or the greatest happiness of the greatest number.

His *Pannomion*, had it been finished and properly fused with his *Theory of Legislation*, which, so far as it goes, is finished, would have given us a science of legislation as it ought to be, a science of universal jurisprudence, but differing from the works on jurisprudence written since, because they are abstracted from *actual* systems of law — English, German, or Roman law; and the chief value of Bentham's would have consisted in its being, as to form, models for the others, of logical divisions, accurate definitions and nomenclature, on which he laid great stress; as to content, an alteration of the actual systems so as to agree with the test of utility, and the expulsion of what did not so conform. What is to be finally said of his labours in this department, fragmentary and unfinished as they are, is that he laid a kind of foundation for a science of law or jurisprudence which Austin further worked up in

parts, without finishing the structure.[1] This science, as conceived by Bentham, is a scheme of commands which the governing portion of the community imposes on the governed for the general interest or happiness, and which it enforces under penalties in the same general interest. And as Bentham, in pursuance of his scheme, drew largely on the analysis, logical and psychological, of the leading legal conceptions, on logical divisions and accurate and consistent definitions of words, he is the founder of the Analytical school of jurists as opposed to the Historical school, which pays more regard to the slow evolution of the great legal categories, and on the other hand to the school which founds upon Natural Law.

And certainly the analysis of legal conceptions will not furnish a true science unless we can show *why* the civil parts of the law regarding property, bequest, contracts, marriage, etc., are what they are, have been the work not of chance but necessity and reason. Why there is a great similarity, with subordinate differences in the laws in civilised communities, whether the government be a despotism or a republic; what is the explanation of the differences; why the criminal law is what it is and much the same in every country; why one country has a constitutional law while in another there is nothing to check the monarch's will but custom and opinion,—these are questions for a true science of law. To explain the present in any real sense, to show why it is, requires a knowledge of the past history of all these topics, property, contracts, criminal laws, constitutions, governments, etc., which no mere analysis or examination of our present conceptions of them can give. General utility, on which alone Bentham would justify them, is not the sole reason why they came into being, nor is conformity to present utility the sole test, though it may often be a good test of their fitness to continue.

A true science should show the antecedent causes of our present laws and institutions; it should also examine their present

[1] The nearest approach to a complete filling up of the scheme is to be found in Professor Holland's *Elements of Jurisprudence*, which, however, is abstracted from law as it is not as it ought to be, as on Bentham's view.

utility and reasonableness. And it may be from the history that something more than utility, that inevitable necessity was at work, that apart from the question of their utility, they could not have been other than they are from principles of human nature. And in some cases this is the result of the historical review; in others not so. But in either case there is an increase to our knowledge as derived from mere analysis and the consideration of utility alone.

It was a vague apprehension of this sort that made Burke so distrustful of the application of mere reason to society and its laws and institutions, as if our country was "a carte-blanche to scribble what laws we pleased on." He divined what the Historical school has since justified, that property was natural and necessary to give our nature its development, as well as for its lower and more obvious utility, and that it must inevitably exist, save in exceptional cases where human nature is maimed, as in the convent, or where it is temporarily exalted, as in the first enthusiasms of a new religion. What he did not know was the need of a careful revision of the conditions of acquiring property, and the permissible rights of property, lest they hinder the general good, including the good of posterity.

§ 11

Bentham had gone a considerable way towards creating a science of jurisprudence in his *Fragment on Government* and *Principles of Legislation.* But he was not content with such a considerable work. What he gives is at best legislation as it ought to be. It is "unauthoritative jurisprudence," and he strongly desires it to become embodied law. Perceiving how much of English law was created by the judges in the administration of the common law; believing that the making of that law called unwritten law was a usurpation of the functions of the legislator, to whom alone it should belong to create new law; seeing further that this unwritten law was to all but the lawyers unknown and unknowable, and hence bad law; perceiving also anomalies and contradictions in the recorded cases, gaps to be filled with good laws; also anachronisms,

illogicisms, in the common law, want of proper divisions and definitions in the statute law, all which he signalises, he is an advocate for the codification of the whole law, written and unwritten, or at least for a digest of the whole. This would make the law cognoscible, and it could not but happen that in the making of the digest some reform in the law would result; some of the absurdities and contradictions would disappear. The result might not be an ideal and complete code, but it would be a great advance on the huge chaos of English law, which is unknown to the people, unknown even to the professional lawyers, but which nevertheless the people must shape their most important actions by at their peril.

Others in England, like Sir S. Romilly, advocated codification, but the time was not opportune or ripe for such, especially as eminent authorities on the Continent, like Savigny, objected to it that it might stop the spontaneous growth of suitable laws.

English law was too full of glaring evils and anomalies, Bentham believed, for lawyers to allow the flash of light on it that codification would shed. Besides, the Tory Government wanted neither light nor law reform. So Bentham turned his eyes from his own country to the United States, and in 1811 addressed a long letter to the President of the United States, offering to codify the actual laws of the United States, both the unwritten and statute laws, in accordance with his general scheme. Finding no response for a long time, he then applied in a very different quarter, namely, to Alexander, Czar of All the Russias, making a like offer, which was still less likely to be entertained unless the principle of the greatest happiness would be kept in the background, since such would hardly commend itself to a despot or his bureaucracy or the landed aristocracy, with its millions of unemancipated serfs, whose greatest happiness might be sacrificed under the existing system. The emperor politely replied and even sent him a signet ring, but intimated that the work was in the hands of a Commission, who would be glad to address questions to so eminent an authority. He turned to the Governor of Pennsylvania, was tantalised with hopes, followed by delays, finally by a shelving of the subject, owing, as was said, to the sinister

interest of men of law in the Legislature, who represented the proposal as "visionary and impracticable." Finally, in July 1817, he addressed the citizens of the United States, the final sovereign, in earnest and remarkable words, very flattering to their national and individual vanity. He invites them, through the benefits his legislation would confer on them, and through the great example it would set, which would be quickly followed, to more glorious conquests than any hitherto known.

Lastly, in 1822, he made an "appeal to all nations professing Liberal opinions," feeling it would be more appropriate for them than for despotic governments to draw up "for the competent authorities" a draft of an all-comprehensive body of law; an appeal which met with no more favourable response than the preceding ones.

If we ask the cause of this repeated and almost undignified persistence in offers to draw up comprehensive codes, the answer is, Because he could not get the work taken up at home, he applied abroad; because he thought it a work of great importance—perhaps more than it really was; because too, he was getting old, and he wished before he died to associate his name with the promulgation of a philosophical and complete code. He aspired to the glory of a great law-giver, whose work, like that of Moses, Manu, or Mahomet, would live for ever, only that his would be so much greater than theirs, as the work of a philosopher who knew logic, with its exhaustive divisions and sharp definitions, together with the universal applicability of the principle of utility, on all which the earlier legislators set but little stress.

If, indeed, Bentham's offer had been accepted in all its extent, he would have become something greater than a President of the United States or any Chief Justice of the Supreme Court, a lawgiver on a grand scale for the people and their posterity. For, besides putting all the statute law of the United States into the code, he aimed at sifting from the mass of decided cases in the United States (the common law) the rules and principles involved, and perhaps extending them by analogy, and having all turned into statute law by the

authority of the Legislature. Moreover, what is more significant, he aimed, if not at filling up the inviting gaps, at suggesting, by his method, the gaps to be filled up and the best manner of providing for them. And not only so, but he proposed to introduce a running commentary of reasons, all grounded on the principle of utility, and on that alone, allowing no other possible authority or lawful source for law—neither the feeling of natural justice or religion—thereby running no small risk of offending the religious feeling of a Bible-reading and religious community, strongly pervaded with sleeping Puritan fanaticism and perhaps something that he would call asceticism ; that is to say, he proposed to establish and consecrate his principle of utility, not alone in the sphere of law, but to make it appear to be, in the opinion of legislators, the sole theory of morals ; no reasons not resolvable into utility being admitted. Now, though the general utility is a main concern of legislation, especially in a democratic community, yet Bentham's rather coarse and commonplace view of utilitarianism was no more generally accepted in the United States than in England, while the theory of natural law was largely held by the lawyers in both countries. Had his proposal been adopted, he would have been the supreme lawgiver as respects both the civil and penal branches, and he wished, as far as possible, to anticipate the future by inserting in the code the principle of its own revision. He did not anticipate much revision, and the less the better. As he says, "If the principles be the best in the law, and no reason comes with time for a change, it will not be easy to get a better." It is a truism that it will not be easy to get a better than the best, but he assumes that his is the best, and when time brings the need of a change he would insert the principle and scope of such in accordance with the same principles of utility. And he was sanguine enough to believe that if but one State of the Union accepted his offer, all the others would be forced, by the evident superiority of his code and the contagion of a good example, to adopt it.[1]

[1] Finally, in a burst of prophetic rapture, he says, addressing the people of the United States : "These labours of mine, . . . let them be

He did not propose to touch the constitutional law of the United States. It was, he said, wholly admirable. Still, for reasons of symmetry and completeness, he would like to include it in his code and to throw over it the proper justification of reasons, to give it his benediction on grounds of utility. But suppose here, too, on a secret comparison with his own ideal constitution, it appeared to suffer by the comparison, it is not unlikely that his private opinion of a weakness in some place would let itself peer out, perhaps to the future profit of the constitution, meantime to the scandal of all the devout worshippers of the constitution, the most sacred thing in America.

His offer was not accepted. It appeared too large and risky to some politicians; to the lawyers, a visionary and impracticable thing. He was much disappointed. He had, he said, a real relish for the work. And now that he had delivered himself, or nearly so, on parliamentary reform, what else was there for him to do? A prominent public man in America tried to console him, informed him that his labours were much appreciated in America spite of the refusal, and finally gave him a good piece of advice, to write a philosophy of law, a work on jurisprudence as it should be, something after the example of Adam Smith's *Political Economy*; or, he said, construct your complete ideal code without caring whether actual systems take it up, without reference to the actual laws of any country, and let it work its way. Such a work could not fail to have fruit.

This was excellent advice and to the point. And the fact is, what Bentham mainly wanted done immediately by a State submitting its laws to the mould of his plan and making a tremendous experiment and full of risk, has been largely done in a slow piecemeal fashion by the lawyers themselves, on whom he was so unjustly severe for preferring, as he

accepted by you; you shall be a people of conquerors. . . . To the conquest to which you are here invited no ultimate limits can be assigned other than those which bound the habitable globe. To force new laws upon a reluctant and abhorring people is, in addition to unpunishable depredation, the object and effect of vulgar conquest; to behold your laws not only accepted, but sought after—sought after by an admiring people—will be yours."

alleged, their professional interest to that of the public. It has been done by them and by the government, but only after parliamentary reform; and if Bentham were now living, he would see much of his ambition realised. His influence has prevailed not only in England, in the rising English colonies, in British India, but very largely in the United States of America; and herein lies his chief glory.

And the very codification which he urged is now being felt to be more and more a necessity, however great and difficult the task will be. It is felt[1] "that the incessant growth of new law must render an authorised republication of the whole at some date or other an inevitable necessity. The need of codifying is growing just in proportion to the ever-increasing difficulties of the task."

Still more in a democracy. Because if law is the expression of the general will, it would be necessary, before it could be really so, that what is supposed to be such should be in such a shape that the democracy could comprehend it. Then they would be in a position to give their assent or dissent, and then the laws assented to might be truly said to be the expression of the will of the sovereign people. But it would be absurd and paradoxical that it could not know what in theory was the expression of its own will.

[1] Sheldon Amos' *Science of Law*, p. 383.

III. ON CONSTITUTIONAL REFORM

§ 1

Let us now consider his views on the English Constitution, for the reform of which he was a vigorous and successful pleader. As to forms of government, he accepts the usual division into absolute monarchies, aristocracies, democracies. Of these the first two are incurably bad, but aristocracies are the worst. In both, the general interest is sacrificed to the selfish and "sinister interests,"—in the first case of the governing one, his instruments and creatures, in the second of an irresponsible confederacy and its dependants, who together plunder the people and oppress and insult them if they murmur. They are both illegitimate governments, because the true object of governments, the greatest good of the greatest number, is necessarily sacrificed and set aside for the good of a few. The second is the worst, because an absolute monarch, if virtuous, might abdicate or restrict his prerogative or even introduce democracy, a thing which is "on the cards," and there are at least instances of absolute rulers abdicating in favour of another like themselves. A Charles of Spain, a Christina of Sweden, have done so, but who ever heard of an aristocracy abandoning the least particle of power? The actual government of England in the year of grace 1817 (the time when Bentham was writing on constitutional reform) was an "aristocracy-ridden monarchy," combining all the evils of both. It was the worst possible government, the farthest from having the peculiar excellences of monarchy, aristocracy, democracy, which Blackstone claimed for it. It was not a limited monarchy; nor was it a government with nicely-balanced powers of king, aristocracy, and people. Such a balance is impossible in itself, as it would imply no motion

or perpetual deadlock. In reality the great body of the people were unrepresented in Parliament, while the small part said to be represented were not really so. The majority of the seats in the House of Commons were under the control of 207 powerful persons, peers or great landowners, and for the remaining seats, which were not properties, the members were returned by corrupt electors. Judge therefore how far the people of England were represented.

The government was a usurpation. It had nullified by bribery, corruption, and the terror exercised by powerful landed magnates, the original political power of the people constitutionally granted and exercised. The suffrage was in former times much wider. There had formerly been annual Parliaments. After the Revolution of 1688 they were triennial. The Septennial Act, by which the Parliament of George I. in 1717 prolonged its own existence, was an unconstitutional usurpation of power. And this usurping government, with its unconstitutional origin maintained by corruption, rested finally on military force and not on the consent or affection of the people.

Here in brief is his theory and history. Let us consider the first a little closer. His argument is that an absolute ruler must, at all times and wherever he rules, have an interest adverse to that of his people; that the interest of the people is only coincident with that of its governors in a representative democracy, where the people elect them, or elect those who appoint others to govern; that absolute government must be illegitimate and even immoral when tried by the test of utility, the test of the greatest happiness of the community, the only true test. Locke also, as we have seen, maintained that an absolute monarchy was not a legitimate government, but his reason was different, namely, that the people could never have made an original contract conceding absolute powers to one man.

That the argument of Bentham is unsound has been shown indeed by Mill, who points out that there was a complete identity of interest between ruler and ruled in the time of Henry VIII. and Queen Elizabeth, both of whom had the same main objects at heart as their people. And is it not perfectly clear that an absolute monarch may be the very best possible

ruler for a semi-civilised or an uncivilised people? In any case no other is possible for certain races, no other would be endured by the people themselves. The despot is the expression of their will. His will is their inmost will as to matters of government. In fact, here democracy and autocracy coincide. The people desire a single absolute ruler. It is their inmost wish to have such, and not to have any other. It is representative government, too, of a kind. He is their representative, only one without mandate or instructions. As it is the government they most wish, it is evidently legitimate. It is equally clear that a despotism like that of Peter the Great is the best for the happiness and still more for the improvement of a backward people.[1]

Clearly the interest of a great and good monarch like Aurelius or Solomon is coincident with that of his people, and so very much so that such a one has sometimes greatly increased the general happiness through his capacity and virtue. Bentham's reply would probably be,[2] Yes, a good king may appear, but he is rare. The class of king is bad; the majority are bad, and in political and moral subjects it is the characteristics of the majority that concern us. Well, then, let us take the majority of individual rulers. They will be neither capable nor virtuous; through their egoism or vice or folly they will prove hostile to the general weal. In fact, his view is very much that of Samuel the prophet when he laid before the people of Israel the evils that a king would bring. But we find the people would not hear him, but said, "Nay; but we will have a king over us; that we also may be like all the nations; and that our king may judge us and go out before us and fight our battles": such were the advantages they expected. Kings are, in fact, natural chiefs—originally the best leaders in war, and otherwise the ablest or wisest. They were first chiefs of small groups, then of greater and greater ones through successful wars, till at length we come to a Sennacherib the Great,[3] king of kings. So it

[1] See on this Mill's *Logic*, vol. ii. p. 480.

[2] See his *Letter to Lafayette and the Citizens of France.*

[3] See Spencer's *Sociology*, vol. ii.; and Maine's *Early History of Institutions*, chap. v.

was with the Assyrians, Babylonians, Egyptians, and most of the historic peoples. Greece was a sort of exception. There were kings first and then democratic government in cities. And Rome became a republic after the expulsion of Tarquin, and flourished greatly as a republic. But she could not last as a republic; nor could Greece. And under the Empire were there not princes with no sinister interest? For a hundred years, the most remarkable in the history of our species, as Renan says in his *Marc-Aurèle*, there was, owing to the departure from the hereditary principle and the substitution of the admirable principle of adoption, a unique series of great princes,—Nerva, Trajan, Hadrian, Antoninus Pius, Marcus Aurelius,—under whom Roman law was improved and perfected in the way desired by Bentham, slavery mitigated, natural justice and humanity aimed at, manumission of slaves favoured, philosophy encouraged, and in which the prince was the first and hardest workman in his empire. Did we not see again a Julian, hero and philosopher, first in war and first in wisdom, born to rule men for their good, had not the fatal Parthian spear too soon cut short his wonderful career? Of course, when rulers become hereditary, ability is only an accident. But it was a long time before they became hereditary. Not always the son but the ablest male agnate succeeded in turbulent times. Bentham's objection only applies to some hereditary kings. It does not apply to an able and good despot in early ages, or even now to such a one for certain people.

The argument of Bentham breaks altogether down on appeal whether to reason or to history. The rule of the one ablest man is the earliest, the most natural, and the best for the greatest happiness of the greatest number. Hobbes was right on this point. But it only applies in the case of an able and good man, and under the hereditary principle it is only an accident, and a rare one, if the king is an able man. The majority will be of barely average ability and virtue. And now, to take our own case, what has really happened in England, omitting rather transparent fictions? Our sovereigns since the time of William III.,[1] with the exception of George III., have

[1] See on this point Hallam's *Const. History*, chap. xvi.

gradually allowed their share of the sovereign power or prerogative to dwindle, till now it amounts to little more than zero.

But it was not so in former ages. During the whole period of the Feudal Monarchy, that is, from the Norman Conquest to the accession of the Tudors, if the king was an able man,—and there were an unusual number of able kings owing to the occasional departure from the strict rule of succession,—if he was as able as Henry II., Edward I., or Henry V., he enjoyed ample authority. Nor does this appear to have been used to the detriment of the people's interest. Excessive taxation to support foreign wars they sometimes complained of. Still these wars against France or Scotland were generally popular, especially when successful. When the people rose in rebellion, it was rather the abuses of the nobles' power than the exactions of the king they complained of. It is certain that Henry V. and Edward IV. were popular, though both were allowed to have very much their own will. It is certain too that the strong Tudor sovereigns were popular, and that Henry VIII., the most despotic of all, was the most popular, because the people regarded him as their protector against the arbitrary practices of the nobles,—in particular their clearances and enclosures. But the Tudor sovereigns were unusally able. The Stuarts that followed them had neither their ability nor discretion. They one and all wished to be despotic in an age when the spirit of liberty had been widely aroused; and they wished to force their subjects' conscience on the matter of religion, during a century when religion was considered the most important and vital of all interests; the final result being that James II., in spite of his large standing army, found himself opposed to the majority of his subjects both in England and Scotland, and by his own folly forfeited his crown, and the ample prerogative he might otherwise have enjoyed.

Let us now consider his argument against aristocratic government. Why is an aristocratic government bad? For the same reason that a monarchy is bad. It must be carried on at the expense of the general weal. An aristocracy *must* regard only its own interest, and this interest *must* be hostile to the general interest wherever there is no responsibility of the governors to

the governed. Only where there is responsibility can there be this identity of interest and coincidence of will between rulers and ruled; and this is only possible in representative government accompanied by certain precautions. Such is his theory; a deduction from human nature, assumed to be selfish, and from class selfishness which follows from it. There is also the assumption, as Mill points out, that identity of interest can only be produced by responsibility. But history does not bear this out in the case of kings. How far does it confirm the theory in the case of aristocracies?

Twice in the history of England the aristocracy have been the ruling power. From the Conquest they were powerful, but from the death of Edward III. to the accession of the Tudors, that is, for a hundred years, they were nearly all-powerful. They deposed Richard II. and raised Henry IV., and very nearly deposed him again. They deposed Henry VI. and Edward IV., and restored both again; made Richard III. king, and again, after Bosworth, Henry VII. When there was a strong king, an Edward I., Edward III., or a Henry V., they loyally followed him to Scotland or France in his wars. When there was a weak one, they regularly conspired, and a few of the most powerful when united together were able to pull down and raise up such kings. Usually in these combinations there was one presiding, one commanding spirit, a Simon de Montfort, a Percy, a Neville (Warwick, the king-maker), whose will governed all; so natural is the tendency to the ascendency of one. But the aristocracy, so far considered, were rather controllers and choosers of the king than themselves the supreme power. Certainly when they interfered successfully they were supreme, but they respected the hereditary principle, and after the exercise of their sovereign power they returned to their allegiance and their normal rôle, or merely acted as chief ministers or advisers.

But in another sense they ruled very effectively; in their own castles, over their own territories or fiefs, they ruled by the very essence of the feudal system. There they were autocrats rather than aristocrats. Far away from the court or capital the feudal nobleman was a king, although but a petty king. He ruled his vassals, men-at-arms, serfs, tenants; he protected,

sometimes plundered, the craftsmen of the neighbouring town or village dominated by his castle. The potent baron was near, and his arm was strong. The king was very far off in days when few good roads existed, the "king's justice" was difficult to get, and the law courts could afford small protection against the abuses of feudal power. Besides, justice was partly administered by the baron in his own court, so that another of the attributes of sovereignty was possessed by him. He dispensed justice, he could bring a small army into the field, his word was law,—"The speech of him that of right commands," but only for his own following. It was specially in the fifteenth century that their power was greatest. Something like a concentration of authority and amalgamation of fiefs had taken place alike in England, France, Scotland; and in all three countries there came a struggle between the Crown and the nobles.

The Wars of the Roses, which proved their power in England, in fact were the means of destroying it for a long period.

They took opposite sides in a quarrel largely of their making, fought furiously for thirty years; many were killed in battle, some were attainted and died on the scaffold, their followers were slain, and the population did not increase fast enough to fill up the vacant ranks. They extinguished themselves, committed political suicide, in a furious, desperate, protracted struggle. After they had nearly destroyed each other, one of themselves, the Earl of Richmond, took advantage of the general exhaustion and the unpopularity of the reigning king, Richard III., to raise an army mostly of foreign adventurers, but swelled also by discontented nobles, by which means he conquered at Bosworth (1485), and became King of England He was able and crafty, and he resolved to further break the power of these dangerous nobles now that they had served his turn. He passed laws limiting the number of retainers both in England and Ireland, and thus clipped their ambitious wings, so that a possible king-maker might no more arise. He put one of the most potent of them, Sir William Stanley, to death. Still more determined was his able and resolute son, Henry VIII., to keep in check his nobility; he held them so well in hand

that only once, at the Pilgrimage of Grace, did any of them rebel, and that on account of his innovation in religion. He put many to death. He conciliated some, he raised new men from the lesser nobility to the rank of nobles—Russells, Seymours, Dudleys, Herberts—and endowed them with the confiscated Church lands. In fact, he showed more policy than even his father in controlling the dangerous order of nobility. He had the Tower axe sharp. He held the old nobility in fear, and attached the new to him by bonds of self-interest. Besides, he gave them employment in his French, Scotch, and Irish wars.

The result was that the power of the English nobility steadily sank, the power of the Crown steadily rose for a hundred years, except during the short minority of Edward VI., when the parvenu nobles ruled, and two very able ones, Somerset and Northumberland, paid a heavy penalty for it.

The Great Civil War (1642–51) showed how weak politically they had become. In general they took the king's side, but they could only bring a small following into the field, except in Scotland, where the clan system prevailed; and a very extraordinary thing resulted. Notwithstanding that arms was their profession, that every nobleman and country gentleman was a soldier, they scarcely ever won a decisive victory, and not one of the aristocracy distinguished himself or made a great name as a general, except Fairfax, who went against the king, and Montrose, who conquered Scotland for the king. After the Puritan army was remodelled the Royalists were invariably defeated.

The people of England, or rather a sect of the people, led by fanatical members of the middle class and a small fraction of the nobility, conquered the king, the aristocracy, and the gentry. At their own profession they were beaten, chiefly, it must be allowed, because of the religious enthusiasm of the Puritan soldiers and the great ability of two or three of the generals who led them. A strange and totally unforeseen thing resulted,—an English Republic was proclaimed. The House of Lords was voted to be "useless and dangerous"; while some of the nobility, including the Earl of Derby, whose ancestor

was a "king-maker" at Bosworth, and the Duke of Hamilton, were executed. This was the nadir of the fortunes of the English aristocracy, from which many at the time thought it had sunk to rise no more. But this was a great mistake. For after the most extraordinary and dramatic twenty years of English history, in which a king was executed, and an English country gentleman, who had conquered the three kingdoms, took his place with even greater authority, governed England well, and died peacefully in his bed,—to save England from anarchy or a new dictatorship to which things were drifting, as the sole resource, and as it turned out to the general joy, Charles II., the son of the executed king, was restored, and the English nobility again raised their heads.

The House of Lords was restored and met after an interregnum of eleven years. It recovered a certain degree of power, though the House of Commons was and continued to be the predominant House. At the Revolution of 1688 they got another grand chance, when a certain knot of Whig nobles played successfully the old game of king-making. They invited over the Prince of Orange and proclaimed him king on the flight of James II.; as a consequence, they mostly, but not always, enjoyed the confidence of William III., and had the great offices of State. On the death of Anne a like confederacy of Whig peers, the most prominent being Shrewsbury, Argyle, and Somerset, brought over the Elector of Hanover and proclaimed him as George I., King of Great Britain, France, and Ireland; and from that time the power of the aristocracy was again the supreme power in the State. A Whig oligarchy ruled with slight intermission till the French Revolution, and then a Tory one till 1832; but it was by a historical accident more than by intrinsic social power that they ruled. If James II. had not threatened the religion of his subjects his line would in all probability have continued to reign, and with little abatement in the king's prerogative. But George I. and George II. had to lean on the Whigs, and had to purchase their support by parting with most of their sovereign attributes to the "Revolution families." George III. indeed gave the Tory party a chance, and very skilfully, for one with only moderate abilities, played

off one against the other. Alternately the Tories (joined with the king's men) and the great Whig families were called to form a Cabinet. Once there was a coalition. In 1785 the king appealed to the country, and got a great majority in his favour. Henceforth the Tories and Court party ruled, and especially after the social hurricane in France, which made Whig and Tory nobles, as well as the country gentry of both parties, close ranks. There were only two divisions, as Burke said, Tories (including the Whigs, who had gone over to them) and Jacobins, those who favoured the new ideas in France. The king, however, still managed to retain a fair share of power until his illness in 1810, when the Prince Regent succeeded to the like share; but being less desirous of governing, he gradually let some of his prerogative slip from his hands through desuetude. And thus it was substantially true when Bentham wrote in 1817 that the government of England was an "aristocracy-ridden monarchy," though it was more an aristocracy than a monarchy.

If we inquire into the causes of their power throughout this long period other than the historical accidents above mentioned, it will be found to lie in their great estates. Unlike the feudal barons, they could bring few retainers into the field; but they still owned the land, ever more and more aggregated by the purchase of smaller properties both of impoverished yeomen and the smaller gentry, as well as by vast enclosures of common land. The landed interest was far more important than the manufacturing or commercial. The great trading magnates and millionaires had not yet appeared. The landowners were the only very rich class, if we leave out the smaller class, who made great fortunes out of the plunder of India, the "East Indians" as Burke called them. Then the landowners controlled the country seats by their "sinister" influence over tenants, and with their wealth they could bribe the other voters. Besides, they had pocket boroughs, seats which they could present to poor men of genius like Burke, thereby securing an infusion of much needed ability.

Some power must govern. The nobility got their second chance under the First and Second Georges. They had the real

elements of political power, in the shape of social prestige and wealth, large and increasing rent-rolls; and it would have required a Gustavus III. of Sweden, an able soldier and a somewhat unscrupulous man, to unseat them, as Gustavus did his nobles. George III. ceaselessly struggled to limit their power and to increase his own; and had the American War turned out otherwise than it did, it was feared by the Whigs, including Burke, that he might have succeeded. The French Revolution, however, came and fused the interest of king and aristocracy by turning all but a few of the latter into Tories.

Such in outline is the social and political history of the aristocracy in England. And now was the general interest, as a fact, sacrificed during these two periods of aristocratic ascendency? Take the feudal period. They only exerted their influence when there was a bad king; when there was a strong one they loyally followed him; that is, they were controllers rather than rulers. Still they wielded the king-making powers, and were in that sense sovereign during the century that ended with the accession of the Tudors. In their own baronies, over their own dependants, retainers, serfs, or tenants, they ruled autocratically, like small kings. But it by no means follows their rule was bad or that they sacrificed the interest of their dependants to their own; on the contrary, no other scheme or type of rule was possible. It responded to the social necessities of a turbulent time. The lord gave protection and the means of subsistence; the dependants military service or other agreed-upon dues. The relation was founded on loyalty on both sides; the service was perfect freedom when the lord, a Warwick or a Northumberland, was popular and gracious. He or his followers might have treated the burghers of the town near his castle with haughtiness, might have been somewhat rough in his methods, hard in his bargains, severe in his exactions, and those were the only part of the population whose interest appeared other than his own. It was his own interest that the whole feudal group should be happy and contented. Warwick's power lay in his popularity, and the majority of his retainers at Middleham did not think their interest and that of the chief other than the same. Moreover,

the nobles were the absolutely necessary leaders of the people in war, whether for their party or their country, whether of foreign invasion or to prevent the country being invaded; and here again the identity of interest between them and the rest of the nation is evident, so that on the whole an "aristocracy-ridden monarchy," to use Bentham's phrase, was the best possible government, and the only possible government for the Middle Ages. So dangerous are general and absolute propositions respecting aristocracies, drawn from supposed principles of human nature, and taking no account of changing historical circumstances.

But the aristocracy ruled far more unqualifiedly during the eighteenth century up to 1832. Was this the best and the only possible government? It was not necessary. It was by an accident that need not have occurred, that did not occur in other countries, that the aristocracy, or rather a small section of the Whig aristocracy, governed England for a time, and by a like historical accident that the Tory aristocracy afterwards ruled. Powerful they must have been in any case from their great wealth and social position, but they might conceivably have been excluded from the supreme rule and government by a strong and able monarch appearing. They were not essential, as the feudal barons were, as military leaders; the Great Civil War had proved that great leaders, soldiers and sailors, may be found in all ranks. But they were the most likely to have influence, whether the king was strong or weak, especially after the temporary overthrow of both royalty and aristocracy in 1649. An alliance was rather to have been expected between both as having a common interest against democratic tendencies; and this occurred, but especially after the French Revolution. So that when Bentham described our government as an "aristocracy-ridden monarchy" in 1817 he was substantially right, only that it was much more of an aristocracy than a monarchy.

Was aristocracy a bad government during this second period of rule? Did it necessarily sacrifice the interest of the greatest number to its own? I think that during this time there was truth in the general assertion of Bentham, that they

sacrificed the general interest to their own; that they ruled by corruption, put their friends into all good offices, made places for them with salaries paid out of the public taxes, neglected the higher interests of science and literature, kept back talent because it was not their interest to bring it forward and employ it in the public service, though it is the interest of a wise monarch to do so. Then their wars were mostly unfortunate, till the Great Commoner, one not from their ranks, broke the tradition, selected soldiers, like Wolfe, for ability, depressed Spain and France, and conquered in India and North America, though much of the latter was afterwards lost by their incompetence. Moreover, they passed Enclosure Acts and Corn Laws in their favour, depressed the yeomen, raised rents when they could, looked down upon and discouraged trade, manifested all the pride and haughtiness which is the besetting sin of aristocracies according to Montesquieu; that "contumelious greatness" against which Hobbes warned all of their class.

§ 2

It must then be conceded to Bentham that in 1817, when he attacked it, the government by an aristocracy was bad and corrupt, and that the general interest was sacrificed under it. The people of England suffered under this aristocratic government, and they were justified in seeking a remedy. What was the only remedy at once real and effective, according to Bentham? Parliamentary reform, first of all; extension of the suffrage so as to be all but universal, with certain precautions to make it a free and therefore a true suffrage, an expression of the real will and wish of the people, instead of one extorted by fear and corruption; secondly, a limit to the duration of Parliament, so that members who betrayed their trust or neglected their duties could be soon dismissed; thirdly, the selection of able and honest men, distinguished for "probity, intellectual ability, and active ability," pledged to regard the general interest instead of the partial and sinister interest of the actual ruling few. If this were done, if the representatives of the people in the House of Commons advocated the interest

of the majority, the people would have, as they ought to have, a real ascendency by their control of that House, which was the most powerful.

More precisely. Bentham advocated virtually universal suffrage, excluding only minors, persons of unsound mind, persons unable to read, perhaps soldiers and sailors, and perhaps women; secret votes (*i.e.* vote by ballot), this being necessary as a guard against intimidation and bribery; and the most important condition of all, annual Parliaments, because the "impermanence" of their seat would be the greatest check on members' abuse of their trust; it would lead to no evils of any consequence, and it would accord with ancient usage, broken by tyranny and afterwards by usurpation of powers by the House of Commons (of 1717 in the Septennial Act). To these he added practical equality of voting, that each vote should have equal influence, including something approaching to a redistribution of seats according to population, and only a vote for a single constituency; in a word, "one man one vote." To conditions affecting the electors he adds, as respects the members, that only those should be chosen who had the necessary qualities of probity, intellectual aptitude, and intellectual activity; that placemen might sit but not vote; regular attendance of members, the accurate and immediate publication of speeches and proceedings in Parliament, so that the elective body should be informed of the performance of their member. And no doubt these measures would in considerable degree have stopped the plague of corruption, and have greatly enlarged the political power of the people. They would have checked political corruption, and would have enabled the electors to choose an able and honest man, and to keep him responsible to them. They would tend to make the member's will an enlightened substitute for their own or that of the majority of them. They would tend to make the will of the people the final controlling thing on the will of the members, to make the members the agents of the people, whose mandate should not extend beyond the scope of its terms.

Too much dependent in fact on the will of the electors he would make them, the majority of them, being ignorant

men, necessarily looking to their own interest, and apt to take wrong views as to what would conduce to it.

However this be, much of what Bentham recommended has become fact. The two most important things—vote by ballot and virtually universal suffrage—have come. Has corruption ceased? Largely. Has the power of the aristocracy been destroyed? It has been greatly reduced, though, through the House of Lords, through their wealth and through their prestige, it is still very great. Has the power of the Crown, the prerogative, been reduced? Very greatly indeed. Has corruption and bribery been annihilated? Very greatly in the old sense. It is no longer a means chiefly in the hands of the upper aristocratic class; but corruption and bribery have not wholly ceased. In fact, some of what Bentham calls corruption—the bestowal of places to partisans being the necessary appendage of political power—will exist so long as man is the sort of man that Bentham regards him, unless so far as the appointments are made by competitive examinations. Interest of self and family will come before interest of the country, the private before the public good, and it will never be wholly eradicated in the breast of either member or elector. Have the people become sovereign—the ascendant power? Has its will become the source of law and government? Theoretically and nominally it has. It is now acknowledged to be the "political sovereign," though the Parliament is the "legal sovereign,"[1] in such a sense that the will of the House cannot permanently or for long diverge from the will of the people clearly manifested. It can dismiss at next election any member who will not accept its conditions. It can refuse to support any other dissident candidate in like manner.

They have got so much power since the last Reform Act that their interests cannot be any longer sacrificed; nay, they have theoretically got so much that they could send to Parliament, if they were agreed, a majority pledged to bring in equality of goods, or Communism, or Collectivism, which is next door to it. And might they not through demagogues and agitators be got to accept such a programme and press it on

[1] Dicey's *Law of the Constitution*, chap. i. p. 69.

candidates? This is the particular objection that Bentham considers in his pamphlet, entitled *Radicalism (or Democracy) not Dangerous* (1819); because he thinks confiscation of property in their favour would be ruinous for the people, and would not be attempted by the members chosen by them.

I agree with Bentham in thinking that Democracy is not dangerous in this particular direction, because there is good reason to believe that the mass of the people, the working classes, instinctively know, or can easily learn on good and satisfactory evidence, that their own interest would be ruined by the proposed delusive equality, which would lead, not to abundance, comfort, greater liberty, but to speedy poverty and misery, to chaos and civil convulsions, and the probable loss of their newly acquired political liberties. They will not ask what their own true leaders, men like Bentham, have warned them against as fatal to their own interest, what no honest or sane persons would advocate, and what only half-crazy fanatics, quacks, conscious or unconscious, or professional agitators recommend as their panacea,—the old and ten times discredited remedy, never so little applicable as now, though it is quite possible and likely that short of this they will ask for legislation in their own interest wherever it is unjustly sacrificed; ask for further employers' liabilities, amended poor-laws, educational advantages for the young, a freer field for ability in their ranks. All these things they ought to obtain, and certain other things beneficial as well to their employers as to themselves, such as protective legislation against extortion by usurers of all kinds, cheaper justice as well as medical service, etc.;—in fact, the State should do all that can be done for their interest without hurt to other vital social interests.

§ 3

It is some confirmation of the truth of these views that even after a third Reform Bill, and with a virtually universal suffrage, a suffrage of over seven million voters, we have had in 1895 a Conservative Parliament returned with the greatest majority since the Reformed Parliament of 1832.

Of course this will not last, but there is no reason to fear that even when Liberals come into power they will adopt a wholly new and revolutionary policy. Conservatives and Liberals will have their turn as before; there will probably be less difference in their practice, less even in their professed principles, since both under universal suffrage will have to conform their measures to the wishes of the majority of the people, as both will profess to aim at its welfare, and especially the welfare of the working classes, the most numerous. Both parties must thus profess Bentham's aim, the greatest happiness of the greatest number. They will both have to inquire wherein lies that greatest happiness; and here they may indeed differ. Not that there is really much room for difference. So far as there is such a thing at all as political science, both parties will have to go by the practical maxims which flow from its scientific conclusions. And that there is being evolved a political science, containing certain fixed conclusions, cannot be doubted; conclusions partly economic, juristic, ethical as to property, inheritance, contracts, nearly as necessary and as universal as mathematical truths; others, again, though less absolute as to the functions of the State and their temporary widening tendency, but still within fixed limits, set by respect for the sacred rights of the individual, to secure which is the surest way to the general happiness.

Such a great body of scientific truth slowly growing clearer, the result of the long labours of thinkers, will more and more control the principles of both parties whatever they may profess. Conservatives may profess conservation and Liberals progress, but the Conservatives will have to progress, to improve, perhaps to remove as well as to conserve. Where the people return a Conservative majority, it will mean that they are not in a mood for much legislative changes of the Liberal type; perhaps not in a hurry for any legislation, fearing that the Liberals were going too fast or favouring dangerous experiments; and where they return Liberals it will signify that the former mood has passed, that they are not afraid of changes, that they desire some special reform or improvement of the kind associated with Liberalism in the past. But safe

and beneficial social legislation they will be thankful to either party for. Not that they will expect or desire revolutionary legislation either in attacking fundamental institutions or destroying any outlying defensive fortresses, such as a Second Chamber. The people without much political science know from common-sense, and they feel from a long inherited instinct of over two thousand years, that property and contract is necessary, that equality is impossible. They also know that the amount of good a Parliament can do is limited, and that it may make laws productive of evil with the best intentions. They, the people of England, have not in general "the sullen aversion to innovation" which Burke praised; too many improvements of all sorts since have changed this mood, if it ever existed, in a people that has progressed so much. But they have this aversion, as regards what touches their affections, and what has long existed, such as an old Established Church, nay, even a House of Lords. But they would have no objection to reform in the case of both. They have their prejudices, on which Burke so strongly relied, and a people's prejudices are serious and important things, even though wrong and irrational, and averse to some reforms, as Joseph II., enlightened reformer and Kaiser in addition, found to his sorrow. These prejudices, even when wrong, it is not desirable that they should be easily broken down, as Bentham wished, because they are often based on reason. The people, as a fact, have their prejudices in favour of things which make them proof against argument. Happily, too, they have prejudices in favour of approved leaders. That is, they have still the old feeling of loyalty to chiefs and willingness to follow them, right or wrong, on which the very possibility of government depends,—trust, fidelity to a man, rather than a general principle. Such is the way with the people, not of England alone, but of Scotland and of Ireland. They are influenced too by their own member, by their newspaper, by their clergyman or pastor, by any superior intellect with whom they come in frequent contact, even by the local platform orator to some extent. And thus it comes about in the end that there is tolerable harmony between the will of the people, Rousseau's "générale volonté," and that of the majority

of the House of Commons for the time being. It may indeed be changed within almost twelve months; but such a change, though it may result in a change of the government, is not really considerable, since a change of sides in a comparatively small fraction of the voters may change a majority on one side to a large one on the other.

As final result, we have a democracy which selects its representatives to the more important Chamber, able in theory to impose on them its wishes, able even to extract pledges, but which gives to them considerable latitude; nor does it make too close inquiry as to the possession of Bentham's qualifications of "probity, intellectual aptitude, and intellectual activity," which might prove too exclusive for some if exacted in high degree; Bentham perhaps requiring too much excellence from candidates' human nature, and Burke's allowance of some dereliction from the highest standard, on the ground of consanguinity with the constituents, being perhaps the more reasonable.

Now, the majority of the representatives in England and Scotland are taken from a class which is virtually an aristocracy, from a class which, though containing many members, is comparatively small compared with the huge bulk of the people, composed mostly of working men: the large employers of labour, rich merchants, bankers and financiers; the professional classes, consisting of barristers and solicitors, with a few medical men and civil engineers, retired officers of the army or navy, the sons or near connections of the titled aristocracy; the country gentry; the rich newspaper proprietors;—the greater part of all being taken from the upper layer of the middle class. To these add a few editors, a few journalists, a few men of letters, historians, publicists, a few professors, a few labour members, and we have a total of 670 members.

Out of the 670 (largely an aristocracy, and few of them salaried) and the House of Peers a Cabinet is formed, composed of from twelve to fifteen ministers: of these, one is designated by the choice of the majority of his party, or who is known to be most acceptable to that majority, and to the party out of doors. This man is usually the ablest. He is, as we have already said, the nearest approach to a king that we

have,—a king, an elective king, and a real working king, instead of an imaginary or merely ornamental one. According to Professor Dicey, the legal sovereign in England is the Parliament, composed of Queen, Lords, and Commons, because the assent of all is required to make laws, which no other body or bodies can make. In reality, the ruling body, the effective sovereign, is the Cabinet, because it conjointly initiates Bills which may become laws, which the rest of the party *must* in honour support, which consequently the House must pass, and which, if not thrown out in the Lords, will be assented to, as, of course, by the Queen; and as it is known that the Lords must give way in the long-run, it may be said that the House of Commons is the more important House; while the Cabinet is the sovereign part of that House. No doubt it must be supported by the majority of the House, must therefore propose what is agreeable to its wishes and principles, otherwise its followers may oppose it. But we might go a step further and say, if there is a commanding spirit, like Lord Beaconsfield or Mr. Gladstone, to whose will and mind all others in their party defer, that such a predominant one is the real sovereign, the true political descendant of the real rulers, of Edward I., Henry V., Henry VIII., Cromwell, and William III., the last of the real and hereditary kings.

Yes; the Prime Minister is our nearest approach to a king; and a king of some sort nations should have, must have, in spite of constitutional theories and fictions. The proved ablest, who is also a leader of men, with will, oratorical powers, temper, tact, popular powers, such are the qualities desirable, but two would seem most necessary in our time—intellectual ability and ready faculty of speech. He is the king; but only the king of a faction, as the other party, though it must obey his government, censures his policy and measures. Still, as it in turn gets into power, there is a certain equality in the system.

We thus seem to be very far from the sovereignty of the people and the reign of democracy. But it is not so: we have reached the best union or fusion of monarchy, aristocracy, and democracy that the circumstances of our age and history allow; the best that the course of political evolution has

anywhere shown. This working king must occasionally speak to his subjects, must please them, humour them, must in some way appeal to their imagination; must in a sense fascinate them. For the people, if it is to allow itself to be ridden and guided, will only obey a skilful rider, possessed of evidently great qualities as well as powers of speech. Only let him not bring in measures running against deep national instincts or prejudices, save with the utmost caution, and he may have as free a hand as our old kings, and be as loyally supported by the majority. Otherwise, the many-headed may assert a part of their latent sovereignty at the bye-elections, defeat his party's candidate, and at the general election send the Minister himself into the shades of Opposition, to his library to translate a classic, or to compose an essay for the magazines on the fickleness of the multitude and the general instability of things; to a dignified retirement, from which, however, unlike the deposed kings, he may hope to be recalled to take again the lead.

On the whole, it is not a bad sort of mixed government, spite of all its defects, which are not now so numerous or glaring as they were when Bentham wrote in 1817; and we have even much improved since Carlyle denounced it in 1850, as government by Parliamentary or Stump Oratory, though something more remains to be done in the way of improving its composition. Under it, at anyrate at present, any able man of any class may hope to become king. A struggling man of letters, like Disraeli, a rich man of business, or the son of such, as well as the born aristocrat, may hope to win the prize and become king. And in this respect it is a democratic as well as an aristocratic government, since anyone in the nation, if sufficiently able, may aspire to the highest place.

It was not so a hundred years ago. Burke was an abler and more high-principled man, every way a greater man, than Lord Beaconsfield. In our time had he lived he would have been a Cabinet Minister, perhaps the Prime Minister. In his own time he was not even admitted into Cabinets that his abilities made possible. This may have been due in part to defects in temper, or want of tact; but it was more due to the haughty

exclusiveness of the Whig patricians. They could not, however, for a long while do without his services, nor could they, when a great opportunity offered, prevent him from being, from the day he wrote his *Reflections*, the most important man in England, and one of the most important men in Europe.

§ 4

Thus improved is our present method of finding our king as compared with the ruder methods of former ages. The methods and tests employed ensure an able man, though not necessarily a genius nor yet a great statesman.

It ensures an able politician, a good speaker, a ready speaker, with ready power of assimilating knowledge and ideas, not perhaps very deep, just as other methods of sifting and testing ensure able judges, able chancellors, able bishops and archbishops, so that at any given time it is certain that the Prime Minister, the Lord Chancellor, and the Archbishop of Canterbury shall be men of a certain high range of intelligence, but nothing more. In none of the cases do the modes of search and testing necessarily evolve a genius; and, as matter of fact, not one out of ten of the two latter kinds of chief men proves so to be, or leaves a name that is not speedily forgotten; and if it is not quite the same with our Prime Ministers, it is because their names must figure in our history, just as in the cases of the kings and queens.

And if now we look at our history for the past two hundred years since the new method, call it parliamentary or party government, came in, we shall find the rule to be, men of ability, like Walpole, Carteret, the younger Pitt; the rare exception, a man of genius, a statesman with a prescient eye like Chatham; with a fair percentage of commonplace men, like the Duke of Newcastle, the Marquis of Rockingham, Grenville, or Sidmouth. But since the Reform Bill of 1832 things have so much improved that every Prime Minister since, for nearly seventy years, has been an able man, while three at least, Peel, Disraeli, and Gladstone, have risen to the rank of real statesmen. But even Beaconsfield was not a great one; he was only abler

than anyone else in his party. He was shrewd, daring, somewhat unscrupulous, skilful enough to see that the Tory party must alter its professed aims and principles a little, if it was to have a continued and prosperous life; clever enough to outbid his rivals in 1867, in the confident expectation of support from the working classes. And Gladstone? Have we not had in him a divine and heaven-sent one? Well, he was perhaps the best of the whole line of party sovereigns in our century, and something considerable he has done, something great attempted, though without weighing sufficiently the adverse forces. Above all, his greatest attempt did not succeed, and to be a great statesman one must, like Bismarck and Cavour, succeed, and not merely attempt.

The fact is, that it is an extremely difficult thing to be a great statesman, and it would seem as if only at certain favourable epochs and conjunctures can anything considerable be done. Routine and small measures to meet urgent exigencies is all that is possible save at certain times. To attempt larger enterprise is dangerous. The thing proposed may not on the whole be for the general good, or the time may not be ripe.

The fact again is, a great man cannot be expected to appear except in critical times and most exigent circumstances—times and circumstances such as brought forth a Cromwell, a Cavour, a Lincoln, a Bismarck, or a Napoleon. Otherwise, hardly once in a century, if so often. But critical and extraordinary times bring them out. The human faculties are then excited and braced, and do all that is in them to do, and men surpass by much their usual easy-going routine selves. It is, as Burke says, when "the highroads are up, and the waters out, when a new and troubled scene is opened and the file affords no precedent," that a great man gets his chance, and that he usually, but not always, appears; the very occasion to which Burke refers being a signal example in English affairs, when the great statesman was required and did not appear, but only small men of routine ability, through whom we lost our splendid colonies bearing the future hopes of the world.

We only find our big men, our Cromwells and Chathams, in times of crisis—and not always then. In the French Revolu

tion, if we except Burke, we did not find one great statesman, and in the Great War only one great general, while the French found many. Since then the *rule* has been to have able men, but not at all geniuses. Respectable ability is ensured, and the power of saying in attractive English on various subjects what many people know quite as well as the speaker, but which they are not indisposed to hear from a skilful speaker, or even to read in the morning paper, much more the multitude who regard the oration as a marvellous feat and the consummate flower of wisdom, instead of the long result of art and practice seconding natural aptitude.

Carlyle despised both the methods by which our ablest is now evolved, and, with the exception of Peel, the usual ministerial product. Perhaps Carlyle was here a little wrong. A parliamentary king is better than a hereditary one, because some considerable merit the former must necessarily have. And our choice, short of revolutions, lies between the two.

But new intuitions, original ideas, do not come to such men in ordinary times, any more than to able writers of leading articles. They are simply well-informed men, ready in speech, ready at assimilating knowledge and the ideas of others; as a rule, look for nothing new from them. The new ideas, the new possibilities in politics, must be sought for in a different quarter, and, it may be, will not be found. At anyrate, we know the kind of men from whom the new wisdom has come: from men of the type of Grotius, Hobbes, Montesquieu, Adam Smith, Burke, Bentham, the new light comes; even from men like Kant, Hegel, Savigny, though these latter have not as yet had great influence in this country. It is the special work of such men to evoke the new, to convert it into science, and for statesmen to make from this science a correspondent extension of the sphere of practice.

It is no reproach to statesmen that they do not discern the New. They have not the time. It is not their function. There must be division of labour. For seldom, indeed, can a man be, like Burke, both the political philosopher and the statesman, the "philosopher in action."

J. S. MILL

I. THE SCIENCE OF SOCIETY

§ 1

The mantle of Bentham fell upon John Stuart Mill, who, during Bentham's later years, had laboured under his eye and direction in the diffusion of his system; had even aided in the editing of some of Bentham's confused and half-finished manuscripts. Dedicated early by his father, James Mill, to the pursuit of knowledge and learning, and self-dedicated when he arrived at years of discretion to the double life of philosopher and reformer, he embraced with youthful enthusiasm and undoubting faith the system of Bentham in all its fulness, and laboured long in the *Westminster Review* (which had been lately founded by Bentham) to propagate its doctrines. It is true that before many years were over he found its insufficiency as a creed, that it required to be qualified and supplemented by the teaching of Coleridge in regard to matters moral and political, and that in a few years later, as his mental horizon widened further, certain elements, taken from the French philosopher Comte, were found requisite, even something (in 1848) from the school of French Socialists; still he affirmed in his Essay on Bentham that everything that Bentham had said was true, he had merely left unsaid something that was important.

Like Bentham, he was a philanthropist and "humanitarian"; like him, he was a political reformer as regarded his own country; much more than Bentham, he was an ardent believer in progress, moral, political, and intellectual, for the human species, above all, for those races already in the van. He (in himself) was a nobler, more cultured, and higher character than

Bentham, and he cherished ideals with regard to his fellows that never visited the somewhat prosaic and commonplace mind of Bentham, or the stern and pessimistic mind of his father, James Mill, who (as the son tells us in his *Autobiography*) had a poor opinion of the human species, and thought that little was to be got out of life at best for the individual, though something might be done for society by improved institutions. His son, on the contrary, had the grandest and most sanguine dreams for the future of the race, as well as the happiness of the man—dreams that he thought might be realised, and at a not distant date, especially in the moral and political sphere. We were at a low and a comparatively early stage of improvement; how low our unjust laws and institutions, our habits and moral sentiments, so little removed from barbarism, decisively showed. A happiness hitherto unrealised, an elevation of mind and character never yet attained, was possible and could even be soon reached if "will and knowledge were not both wanting." To stimulate and elevate that will, to contribute something that was lacking in that knowledge, was the aim and effort of his life. How far successful he has been, in particular how far he has made important contributions to political and moral science on which he chiefly relied in his hopes for improvement, it will be the object of the following pages to inquire.

Certainly no knight in quest of the Holy Grail ever laboured more devotedly or more persistently than Mill in pursuit of the true and the good. He had in him that "passion for humanity" and its highest interests, which in the mouth of so many is a vain and empty phrase: the "fire truly celestial" which for ten years consumed Rousseau,[1] and which is so apt to smoulder down in the best, burned in Mill nearly through an entire life. This it is which makes him so remarkable and interesting as a man; so noble an example of the virtue he preached and urged upon men, the vast majority of whom are wholly incapable of taking it to heart and carrying it into practice. In fact, amongst the vast egoistic mass he appears as one of those high and spotless and devoted characters, whose rarity makes the appearance of one a sort of moral miracle. So much

[1] *Les Confessions*, partie ii. livre ix.

must be said of the man, whatever be the limitations of the philosopher or the teacher.

He has written on most of the subjects treated by his early master, Bentham: on logic, metaphysics, political economy, political science, moral science, on nearly all the subjects that relate directly to man himself, either individually or collectively, and on all of them he has written much better than Bentham, both as regards matter and style; in the latter respect, indeed, he presents us with a model of philosophic exposition. He has not written much on the philosophy of law, leaving this to Bentham and his friend John Austin, or on law reform, because, not being a lawyer, he could hope to add nothing to Bentham's labours; but he has written, and written well, on international law, which is really, as he regarded it, a branch of morality in the wider meaning of the word. He has written various essays on the philosophy of history, an interesting subject in great vogue during the earlier half of the century, and from which Mill had vast expectations. He has also written on certain important subjects that had barely appeared above the social horizon at the time of Bentham's death (1832): on the possibility of a Science of Society, or Sociology, in which, largely on the authority of Comte, he believes, though he did not think that Comte did more than lay the foundation for it, if so much; on communism and socialism, in the possibility of which, in the distant future, he likewise believes, while thinking that certain choicer spirits in whom egoism was duly reduced would be fit for it even now. As his expectations of a science of society faded from view, his belief in socialism seems to have increased,[1] and, in fact, it would not be easy to hold the belief in socialism and sociology in the mind simultaneously. He is also the author of a noble essay *On Liberty*, one of the finest things he has written, which contains a plea for the largest possible sphere for freedom, not merely from unnecessary law, but from the yoke of opinion in regard to matters, whether of belief or conduct, that solely or chiefly concern the individual, so that he may have a free and large space in which to expand

[1] But in his papers on socialism (1869) his belief seems to have rather decreased.

his own personality, his own individuality, on which he laid the utmost stress, for its tendency to promote both the happiness of the individual and the elevation of the community as composed of such individuals: a plea and a protest conceived in the spirit of Milton's *Areopagitica*, and meriting a comparison with that famous tract. Finally, the knight-errant for Truth and Freedom and Labour embraced yet another cause, the cause of Woman herself, bound and tied and held in subjection by the selfishness of man, excluded from suitable callings and from political functions by cruel and disabling laws, from which she suffers untold wrong and pain and hardship. This is wrong and injustice—an injustice affecting one half the human race; and in his *Subjection of Women* he sets his lance in rest for a last and somewhat Quixotic crusade. He would be the Perseus to set free the modern Andromeda, bound to the rock by male oppression, the good knight to rescue the distressed lady from disabilities, legal, political, even moral, with which evil-minded men had bound her. Some fragmentary papers on socialism, in which there is no doctrinal advance on the views in his *Political Economy*, closed his literary career, though a very interesting Autobiography appeared posthumously.

§ 2

He was a believer in progress, and he would search its law, an unwearied seeker for truth and light; and his greatest book, his *System of Logic*, is written to furnish us with the methods of search for truth, and of its tests when found or in dispute or doubt. After many preliminary essays on various subjects, a little after 1840 he came to the conclusion that his first great task lay here: to teach men to "know the truth," and the ways to find it; a great enterprise, and worthy of Bacon. Let us see how he succeeds.

We should only believe propositions on sufficient evidence, duly tested. Doubtless we believe on testimony which may be good evidence. But we speak now of the first inquirers into truth, or fact, at first hand. On moral, political, religious subjects, belief is produced in us frequently by anything rather than

good evidence — authority, blind prejudice, mere obstinate association of ideas.[1] Truth, knowledge, is the correspondence of the thought or belief in the mind, with facts either in external nature or in the mind itself. Such true knowledge is to be found especially in the laws of physics and chemistry. These laws are true. They are universal, at least upon our earth and within the limits of the solar system; though perhaps not in "distant parts of the stellar regions," where things, he thinks, may possibly succeed each other without any law. The mind cannot believe, though it might imagine an exception to one of them, like the law of gravitation. Nothing is credible to a properly instructed mind that implies an exception to these laws; incredibility, in fact, applies only to propositions contrary to a complete induction, such as all physical laws are. They furnish the highest type of certainty in knowledge, and they are discovered and proved by certain Inductive Methods, in the long-run founded on careful observation and experiment. In the science of physiology, human and sub-human, there are also universal truths or laws, laws of the circulation, of the nervous system, of structure and function, which have been discovered by induction. Other laws there are which remain unknown, because it is impossible to apply the inductive methods of search and proof, in particular there is the difficulty of making a true experiment. Another method is hence necessary, just as in astronomy, where experiment is mostly impossible. This is called the Deductive Method, which is the method of reasoning from general principles of which we are certain, and then comparing our conclusions, so far as possible, with objective facts or inferior laws, with which, if our conclusions agree, we have arrived at new truths that either could not have been observed in all their generality, or not without extreme difficulty. Geometry presents the simplest example of such deductive reasoning, where we feel the most perfect confidence in its general conclusions. Yet the conclusions are got by pure reasoning, without observation or experiment; and if we compare our conclusions, so deduced, with facts that may be observed, we find the latter always agree with, always confirm,

[1] *Logic*, 6th ed. vol. ii. chap. xxi.

the reasoning. The like holds in astronomy, where general truths, including the most general, the law of gravitation, have been reached by deduction. So certain are they, that accurately verified predictions may be based on them months and years in advance. Here, then, are the two routes to truth and certain knowledge: the first, the inductive route, leading to general propositions; the second, the deductive, being the sole route to those great "theories by which vast and complicated phenomena are embraced under a few simple laws, which, considered as the laws of those great phenomena, could never have been detected by their direct study." Why, then, not apply these methods to the discovery of truth in the moral and political sciences, as well as to the testing of the conclusions which we already hold?

And to this Mill replies that induction will not suffice, because experiment is for the most part inapplicable in politics, owing to the plurality of causes at work and the mixture of the effects, and mere observation is insufficient, and hence that deduction alone affords any hope of our discovering truth in these regions of inquiry. It has been applied successfully to discover the laws of mental association, and to explain important mental phenomena connected with moral science; but especially in political science, or the science of society, deduction alone can effect anything; and this only as respects a particular class of facts isolated from the rest, and considered as in a state of equilibrium, as in political economy, that is, without having regard to the fact that economic facts, as well as all other groups of social facts, are in a state of change.

Deduction alone will suffice here, but it must not be a deduction based on the geometrical type of reasoning, as with Hobbes; nor yet, as with the Benthamite school of politics, a deduction which forgets plurality of causes. It must be deduction which studies the effect of only a few causes, the result of a few general laws, as in the case of political economy, where we start with a principle which, though not universally true, is true in a great majority of cases, namely, that men in general desire wealth, and are averse to labour; and if we join with it the Malthusian principle of population, and the law of diminishing return from land on the application of additional

capital and labour, we can draw important conclusions, carrying with them practical consequences, which are at least hypothetically true, and which will agree with observed facts, provided we have omitted no predominant cause. In like manner in regard to the distribution of wealth, assuming the principle of private property, freedom of contract, and the general fact of competition, we can deduce laws of wages, profits, and rents, according to which each of the three great economic classes receives its share of the wealth produced. In this case, by the method of deduction, new truths may be discovered of great importance to capitalists and labourers, as well as politicians and the community generally; and such is the method employed by Mill in his second ambitious work entitled the *Principles of Political Economy*. It is true that the value of his conclusions is now in dispute, as well as the worth of his method in this particular field of inquiry; and true that Comte, by whom he was greatly influenced when writing the *Logic*, had condemned political economy as not properly an independent science, its phenomena being, as Comte affirmed, inextricably mixed up with the other great social facts. Still, Mill was not convinced by his reasoning. He was, however, convinced by Comte that as regards social inquiries generally, deduction was not the proper method of search; that owing to the complication and mutual action of causes it was the wrong road to truth; and that what Comte calls the Historical Method, and himself the Inverse Deductive Method, was the right road.

This method, as Mill describes it, consists in drawing generalisations from history, and then trying to show from psychology and the science of natural character (ethology) that such observed generalisations are not mere fanciful inductions, but such as consist with the general laws of the human mind, and might have been expected in the circumstances. This was Mill's view in 1843 when writing the concluding book of the *Logic*, entitled "Logic of the Moral Sciences." When writing the earlier book on Induction he declared that "physical investigation has now far outgrown the Baconian conception of Induction," and that "moral and political inquiry indeed are as yet far behind that conception"; and further, that for

any considerable improvement in this field we must look mainly to deduction.[1] And this he so far continued to believe that he defended its application to political economy, but not to the social science generally, though the former, as he alleged, was a sub-department of that greater science. In the latter, the historical method is the proper one, but, not to part with the word "deduction," and because deduction is really employed in connecting the inductive generalisations from history with the wider laws of mind, the name he gives it is the Inverse Deductive Method.[2]

§ 3

But by whatever name its method be called, and whatever its subordinate provinces, a grand new science was possible—the science so long dreamed of and hailed from afar by Vico, by Condorcet, and other illustrious names. Mill believed in 1843 that all social phenomena, as well as physical phenomena, were subject to natural laws, and that societies in their history or evolution were subject to natural laws of change, of growth or decay, just as the living bodies were. This was the central conception of the science, though not very clearly apprehended by Mill until he had read the concluding volumes of the *Cours de Positive Philosophie*, published in 1842. In this work Comte claims to have founded the science by his discovery of the Law of the Three Stages.[3] Mill does not think that Comte has founded the science, but only made its foundation possible. His own speculations, in which he is considerably influenced by Comte, are to be found in his *Logic*, vol. ii., "On the Logic of the Moral and Political Science."

According to Mill, the question which the general science of

[1] Vol. i. 6th ed. p. 443.

[2] Dr. Ingram, in his excellent *History of Political Economy*, objects to the phrase "inverse deductive method" which Mill employs. He uses it because we draw the inductions first and then try to show that they are contained under or are deducible from the laws of mind, whereas we do the opposite in employing the ordinary deductive method. We take the general principle, and from it draw the particular conclusion, which we then verify by comparing it with facts or minor laws.

[3] See p. 524.

sociology has to answer is: What are the causes which produce and the phenomena which characterise states of society generally? In the solution of this question consists the general science of society, by which the conclusions of the other and more special kinds of inquiry must be limited and controlled. But what is meant by "a state of society"? He replies: "A state of society is the simultaneous state of all the greater social facts. Such are the degree of knowledge, and of intellectual and moral culture, existing in the community, and in every class of it; the state of industry, of wealth and its distribution; the habitual occupations of the community; their divisions into classes, and the relations of those classes to one another; the common beliefs which they entertain on all the subjects most important to mankind, and the degree of assurance with which those beliefs are held; their tastes and the character and degree of their æsthetic development; their forms of government and the more important of their laws and customs. The condition of all these things, and of many more which will readily suggest themselves, constitute the state of society or the state of civilisation at any given time."

". . . There exists a natural co-relation amongst these different elements; not every variety of combination of these general social facts is possible, but only certain combinations. In short, there exist uniformities of co-existence between the states of the various social phenomena," which is "a necessary consequence of the influence exerted by every one of those phenomena over every other. It is a fact implied in the consensus of the various parts of the social body."

"States of society are like different constitutions or different ages in the physical frame; they are conditions, not of one or a few organs or functions, but of the whole organism. Accordingly, the information which we possess respecting past ages and respecting the various states of society now existing in different regions of the earth, does, when duly analysed, exhibit uniformities. It is found, when one of the features of society is in a particular state, a state of many other features, more or less precisely determinate, always or usually co-exists with it."

From a particular state of one of these we might infer a

certain state of all the others, and then find confirmation of our inference in the facts of the case, *e.g.* a correspondence between the state of the sciences and the arts; between religion and the fine arts; between the economic and the juristic system. Such co-relations, however, are merely empirical or derivative laws resulting from the laws which regulate the succession between one state of society and the next following it; for, according to Mill, "the proximate cause of every state of society is the state of society immediately preceding it"; and the fundamental problem of the social science is "to find the laws according to which any state of society produces the state which succeeds it and takes its place."

And this leads him to the consideration of the great and vexed question of progress, about which so much both in his day and in ours has been vainly written. The human subject, the unit of the supposed science, is changeable, is not the same from age to age, as the lower animals are. At least in certain races it changes; in others within the historic period, it does not. The circumstances in which man is placed, his environment as we now say, conjointly with his own nature, make his character, but his character makes new and generally more advantageous circumstances for his children and posterity. And "from this reciprocal action must result either a cycle or a continued linear progress in the course of human affairs." Why a cycle? you ask, a course returning on its former traces, so that the same round commences. It is from the analogy of astronomy that the suggestion comes. In astronomy when the same circumstances recur for a planet, it must travel in the same path as before, and so on continually. In like manner, if the human species ever arrived at the same circumstances as once before, the whole round would recommence, that is, supposing no free agency or supernatural interposition, in which Mill does not believe, and supposing the law of causation universally true, which he does believe.[1] We should have to suppose the entire course would for ever repeat itself; and we presume that the same people would be re-born in a perpetual palingenesis.

[1] This fancy is referred to twice in the *Logic*, vol. ii. p. 507, and vol. i. p. 401, where the notion of palingenesis is more distinctly indicated.

Mill himself does not believe in this cyclical theory. It was, he says, the opinion of Vico; it had some fanciful analogies in its favour, but cannot be seriously maintained. The true idea is that of a linear path, not returning on itself, constant change not repeating itself. We might, however, pause to inquire how the same circumstances, not merely in details but even roughly in essentials, could be conceived as recurring for, we will not say, identical but merely similar beings. For the human units under supposition have always been not merely changing but enlarging their circumstances in the sphere of industry, and improving their circumstances in the practical arts and inventions, not to speak of fine arts, literatures, and governments, which raise and refine their circumstances. Besides, the man himself has been growing and his "thoughts widening with the process of the suns." To make the figure of a cycle thinkable, we should have to make the impossible supposition that both the man's circumstances shrink to what they formerly were, and that the man himself retrogrades, that he has unlearned and forgotten all his useful arts and lost his conquests over nature, that his expanded nature contracts to that of the man of long time ago, the latter not indeed inconceivable. No doubt, in the matter of religious belief we might conceivably return to the attitude of Plato or Marcus Aurelius and the Stoics, as in the Darwinian theory we have returned very much to the position of Democritus, who derived the world from physical atoms, chance-marshalled. Religious, philosophical, and even ethical speculation, conceivably revolve in cycles, as many believe. Even as regards property and government, a return to the primitive communism is so far from unthinkable that it is the goal of our Collectivists. But even if as respects all these we did return to the past, our material progress, positive science, inventions, and discoveries would remain, that is, our most improved circumstances would remain as now, unless the reversal to communism should, like the invasion of the barbarian Huns and Goths, sweep away civilisation with all its records and results. Even then heredity would remain. The traces of the past would remain in our brains and moral dispositions, and we should start with an advantage over our

ancestors of long ago, and should quickly recover what had been lost.

To return to Mill's theory of progress. It is not a cycle. But neither does progress necessarily mean improvement. He himself believes in progress in the usual sense of improvement, and that the general tendency is and will continue to be, with occasional and temporary exceptions, one of improvement; a "tendency towards a better and happier state." This, however, is but faith, "a theorem of the science of society to be proved." All he insists upon is that there is a progressive change in the character of men and in their outward circumstances; that in each successive age the principal phenomena of society are different from what they were in the preceding age, still more different from any previous age; and the question is, What is the law or laws of this change?

Some advanced thinkers on the Continent, he tells us, have tried to discover from analysis of the general facts of history the law of progress, which law, once discovered, would enable us to predict the future, just as, after we have gathered the law of formation of an algebraic series from a few of its successive terms, we can predict the rest of the series even to the most distant term. To try to gather laws in this way is, he thinks, a misconception of the true method of the social science, because such laws can only be empirical, that is, laws whose cause is unknown, and therefore not to be applied safely to future circumstances until connected with laws of human nature, psychological or ethical. Empirical laws of history do exist, but they cannot be extended beyond the particular time and place, the particular age and people in which they were manifested, unless it can be shown from human nature and character that these laws would follow in the new circumstances. Comte alone has attempted to do the latter, and thus has raised empirical laws of history into real scientific laws.

He contends that no one is qualified for the study of sociology who is not completely skilled in these laws, that is, in psychology and ethology (or the science of character); otherwise he will not be able to prepare the materials for a true historical generalisation by properly analysing the facts which

history presents or even by correct observation of contemporary social facts. Such is the necessary intellectual equipment. He makes no mention of a preparatory discipline in biology, or the science of life, on which not only Comte but Herbert Spencer insists, on account of the important general conceptions and fruitful analogies which biology suggests.

We must begin with the historical generalisation, and then try to connect it with the mental law. We cannot reverse the process; that is, set out from the general laws of mind, and the general circumstances in which man is placed, "to determine *à priori* the order in which human development must take place, and to predict the general facts of history up to the present time." This would be (as is too evident) a wholly hopeless task. The mere length of the series would prevent any pretence of accurate computation after the first few terms; so that "if the series of effects themselves did not manifest any regularity or law, we should in vain attempt to construct a general science of society." But history happily does present empirical laws of society, and the problem he repeats is to ascertain these and connect them with laws of human nature.

§ 4

The empirical laws of society are of two kinds—those of co-existence and those of succession; and accordingly the science of sociology divides into two parts—Social Statics and Social Dynamics. The former concern the mutual relations or *consensus* existing between the several larger interests of society, the principal aspects of the social organism; its government, religion, laws, literature, economic condition, the arts of life, degree of knowledge, morals and manners.

Social statics would ascertain empirical laws or uniformities of co-existence between any of these, and such, if deducible from or connected with the principles of human nature, become raised to true scientific laws. At its lowest estimate, the social statics deals, as its name implies, with the necessary "conditions of stability in the social union"; whereas social dynamics is the theory of society considered as in a state of progressive move-

ment. In social statics the several parts are all mutually related to each other, action and reaction takes place, just as it does between the different organs of the body, brain and stomach, heart and lungs, and in such wise that any considerable change in one is followed by changes in all the rest, however remote in appearance from its influence. For this reason, each of the elements of the social state should always be studied with reference to all the other elements, with the whole of which it is united by mutual interdependence.

As to the mutual relation of the parts, thinkers are agreed. But it is in the dynamics of the subject that we get the best proof of the connection; for it is always found that a change in one part operates immediately or very speedily upon all the rest. Moreover, there is a *consensus*, though of less marked character, between the social phenomena as a whole existing in one civilised country and those in another, especially in modern times. Nations increasingly act and react on each other in these particulars, so as more and more to approximate. All this he gathers from Comte; and further, that "one of the most important and, until lately, most neglected of the general principles of social statics may be considered as established, namely, the necessary correlation between the form of government existing in any society and the contemporary state of civilisation; a natural law which (he thinks) stamps the endless discussions and innumerable theories respecting forms of government in the abstract as fruitless and worthless, except as preparatory treatment of materials for a better philosophy."

He then gives us, partly from his interesting essay on Coleridge, what he considers the "requisites of stable political union . . . one of the main things which a science of social statics should furnish us with if it is good for anything."[1] They are those circumstances which, in all societies without exception, and in greatest degree where the social union is most complete, are to be considered as conditions of the existence of the complex phenomenon called a State. For example, every society has had numerous laws or usages equivalent to

[1] These are also given by Herbert Spencer in his *Social Statics*, with which it is interesting to compare them.

them, tribunals and organised force to execute their decisions, together with public authorities whom the rest of the community obeyed, or, according to general opinion, were bound to obey. These would seem universal, still they are only empirical laws till connected with laws of human nature.

Now, this obedience to government is a slow product, not natural to warlike savages—so very slow a product that it took ages of discipline to break in savage nations to it; and wherever the obedience was at last firmly established, and yet vigour and manliness of character preserved, there were certain requisites necessary. First, for all citizens there existed education, a long-continued restraining discipline to break down the passions and egoism of the individual, and make them bend before the exigencies of the society.

The entire policy, civil and military, of ancient States was such a training; in modern nations (since the downfall of the Roman empire) it has been attempted by religious teaching. The discipline once relaxed, "the natural tendency of mankind to anarchy reasserted itself; the State became disorganised from within; mutual conflict for selfish ends neutralised the energies which were required to keep up the contest against the natural causes of evil; and the nation, after a longer or briefer interval of progressive decline, became either the slave of despotism or the prey of a foreign invader."

The second condition was the common feeling of loyalty to something; something above question, about which all were agreed. It may be, as with the Jews, a common God, the protector and guardian of the State, as distinct from other and false gods; or, as elsewhere, certain persons regarded as rightful rulers, whether by divine appointment, long prescription, or superior worth; or merely laws, ancient liberties, or ordinances; finally, the feeling may attach itself to abstract principles, individual freedom, and political and social equality, which he thinks is the shape the feeling will probably take in future.

This something sacred, above dispute and discussion, has always existed; and the reason is, that causes for internal dissensions there always must be, and nations weathered these

storms without civil wars because their differences did not affect the fundamental principle of the social union, did not threaten large portions of the community with the subversion of that on which they had built their calculations, and with which their hopes and aims were identified.

We have here something in the strain of Burke's *Reflections*; and he goes on, while using one of Burke's metaphors, to lay down a remarkable conclusion and well worthy of note in our time: "When the questioning of these fundamental principles is not the occasional disease or the salutary medicine, but the continual condition of the body politic, and when all the animosities are called forth which naturally spring from such a situation, the State is virtually in a position of civil war, and can never long remain free from it in act and fact."

These remarkable views were suggested to him by the "Germano-Coleridgean school" (so we gather from his essay on Coleridge), the first who produced "a philosophy of society in the only form in which it is yet possible, that of a philosophy of history," and also by the series of great thinkers, from Herder to Michelet, who have made history,—till then little better than "a tale told by an idiot full of sound and fury signifying nothing,"—a science of causes and effects, and who, "by making the facts and events of the past to have a meaning and an intelligible place in the gradual evolution of humanity, have at once given history, even to the imagination, an interest like romance, and afforded the only means of predicting and guiding the future, by unfolding the agencies which have produced and still maintain the present."[1]

Such were Mill's views in 1840 on the statical and dynamical problem of society, just as Comte was nearing the conclusion of his *Cours de Positive Philosophie* (completed in 1842), the last two volumes of which contained a new philosophy of history. Mill, ever on the outlook for philosophies of history, eagerly read Comte's volumes; and in 1843, while utilising them in his *Logic*, he awards the palm to Comte's philosophy of history, in regard to his treatment both of the statical and dynamical aspects of the science.

[1] Essay on Coleridge, *Dissertations and Discussions*, vol. i. p. 427.

§ 5

But the great problem, Mill thinks, is not the statical but the dynamical one; to discover the sequence of social conditions, or how one state of society changes into the following one. If we could connect the leading general circumstances of each generation with their causes in the generation immediately preceding,—in other words, if we could by thus remounting the stream get a scientific history of each of the great branches of social facts or sides of the human spirit (such as art, religion, law, industry, philosophy),—it would be something. But the difficulty, pointed out first by Comte, arising from the *consensus* of all these capital subjects, is so great and so increasing in modern times that we must rather regard it as the *ensemble*, "the whole which produces the whole rather than any part a part," so that the problem should rather be put: "What are the laws according to which social states generate one another as society advances?" He thinks the empirical laws usually gathered from history are good so far as they go, but insufficient: for example, the tendency of mental to prevail over bodily qualities, of majorities to rule over minorities, or of progressive societies to pass from the military to the industrial life. Such generalisations are too remote from the principles of human nature; there are too many links required to connect them with it. We are not sure of their future continuance, nay, that they may not "even be reversed," so that though they may suffice for the historical school of the Continent (so much eulogised in 1840), they no longer suffice for him. These empirical laws "indicate merely the relation between fragments of the effect to fragments of the cause." We must now consider (and the problem is a tremendous one) not only the progressive changes of the different elements, but the contemporaneous condition of each, and thus obtain the real empirical and scientific law—"the law of correspondence, not only between the simultaneous states, but between the simultaneous changes of these elements." This is a little abstract, and perhaps not very clear. What he really means is, that we must know how the whole mutually related set of capital phenomena, their

mutual relations or empirical laws being known, change into the next successive whole, or, in short, how their statical *consensus* changes into the next statical *consensus*. And such law, he gravely tells us, "duly verified *à priori* would be the real scientific derivative law of the development of humanity and human affairs." It would be the grand law of progress of which he is in pursuit.

We have here before us, in fact, a prodigious and, in the way he puts it, wholly impossible problem, namely, to determine by what law a vast simultaneous and complicated whole, composed of some half-dozen large bodies of social phenomena, all in a state of mutual action, changes into another simultaneous whole at the end, as he thinks, of a generation, which allows time for a new set of actors to come on the boards.[1] Now, the natural way to proceed to answer the question would appear to be the way of the new Historical School, namely, to try to trace the history of each set of phenomena during past generations down to the present time, to ascertain the train of causes, to summarise present conditions, and, if we would hazard predictions as to the future, to point out present tendencies, and finally to make a provisional calculation as to what may likely follow from present facts and tendencies; to do this and to do the like in the case of each of the greater social interests.

But if several historians did this—for no one man would be competent to do it—it might perhaps be found that in each department—art, religion, philosophy, positive science, invention, government, the chief categories of the human spirit, as they are the larger social interests—the changes and improvements have been due to men of genius appearing; that the present generation, the present state of society, produces the next—improved if abler and better men appear, stationary if they do not, or even retrograde if the type of leading spirits in each is inferior. Some such law of human development it might be possible to lay down. But, put in the way Mill puts it, the problem is hopeless and unanswerable.

He has even a vague feeling that the problem is wrongly

[1] *Logic*, vol. ii. p. 507.

put and incapable of solution. He says: "In the difficult process of observation and comparison which is here required, it would evidently be a great assistance if it should happen to be the fact that some one element in the complex existence of social man is pre-eminent over all others as the prime agent of the social movement. For we could then take the progress of that one element as the central chain, to each successive link of which the corresponding link of all the other progressions being appended, the succession of the facts would by this alone be presented in a kind of spontaneous order, far more nearly approaching to the real order of their filiation than could be obtained by any other merely empirical process.

"Now, the evidence of history and that of human nature combine, by a striking instance of coincidence, to show that there really is one social element which is thus predominant among the agents of the social progression. This is the state of the speculative faculties of mankind, including the nature of the beliefs which by any means they have arrived at concerning themselves and the world by which they are surrounded."[1]

Thus then, in brief, progress depends on the state of the speculative faculties, because sciences are created by the speculative faculty, and our views on philosophy, religion, government depend on it, while invention and industrial improvement are limited by scientific knowledge, and even fine art is related to it, though the connection is less obvious.

It follows from the predominance of the speculative faculties that the history of civilisation is reduced to a history of the progressive development of the human intellect. The history of humanity is the history of intellect or knowledge in the race. This conclusion, which can be deduced from the laws of the human mind, is confirmed by the great facts of history, and thus it becomes a true scientific law. To quote his important words: "Every considerable change historically known to us in the condition of any portion of mankind, when not brought about by external force, has been preceded by a change of proportionate extent in the state of

[1] *Logic*, vol. ii. p. 521.

their knowledge or in their prevalent beliefs. As between any given state of speculation and the correlative state of everything else, it was almost always the former which first showed itself, though the effects no doubt reacted potently upon the cause. Every considerable advance in material civilisation has been preceded by an advance in knowledge; and when any great social change has come to pass, either in the way of gradual development or of sudden conflict, it has had for its precursor a great change in the opinions and modes of thinking in society. Polytheism, Judaism, Christianity, Protestantism, the critical philosophy of modern Europe (not necessarily the German critical philosophy), and its positive science,—each of these has been a primary agent in making society what it was at each successive period, while society was but secondarily instrumental in making *them*, each of them so far as causes can be assigned for its existence being mainly an innovation, not from the practical life of the period, but from the previous state of belief and thought. The weakness of the speculative propensity in mankind generally has not therefore prevented the progress of speculation from governing that of society at large; it has only, and too often, prevented progress altogether, where the intellectual progression has come to an early stand for want of sufficiently favourable circumstances."

The problem of progress, thus greatly simplified, is reduced to the "ascertaining the order of progression in the intellectual convictions of mankind, that is, in the law of the successive transformations of human opinions." There remains the grand question, Are these successive transformations of opinion subject to law? and the grandest of all, What is the law, the law of progress, which thus gathered and distilled from extensive inductions, drawn from the long past history of human thought and experience and confirmed by deduction from the nature of the human mind, sums up the past of human progress, and by implication contains the future?

Now it appears that the law, when Mill was writing his *Logic*, had not been found; he was still in search of it. But it was asserted by Comte that it had been found by himself, and Mill was at first almost persuaded that the fact was so. What was

the law? It is known as the Law of the Three Stages. The human mind, in considering the phenomena of nature, has passed through three grand stages: in the first (which subdivides again into three), phenomena were conceived to be produced by fetiches, etc.; then amongst the nations of antiquity by a number of different deities, national or tribal, or, as with the Greeks, by deities having different provinces of nature under their direction,—the winds, the lightning, the sea, etc.; while with the Jews all these deities become merged into one supreme Deity. These three successive sub-stages are known as the Theological stage of human conceptions and of the explanation of things. The next stage, which comes in due course of time in all civilisations, is the Metaphysical, when a superior order of minds becomes dissatisfied with the best theological explanation, and tries to explain them by "entities" behind or within the phenomena. This stage was reached amongst the Greeks by the philosophers about the time of Aristotle, and in the Western world in the Middle Ages, when the nascent science was filled with vicious metaphysical and scholastic entities such as "vital force," "Nature's horror of a vacuum," etc., mere fancies or fictions and abstractions turned into realities by the schoolmen and followers of Aristotle which clogged the efforts of genuine scientific inquiry. This state of things went on till the Baconian reformation, when science became finally emancipated from bad metaphysics. The theological view of things, with its crude explanations, still continued, however, outside science, which metaphysics was still endeavouring to soften and make less rude and anthropomorphic. At length appeared a philosopher (Hume), a metaphysician even, endowed with the Positive spirit, who boldly asserted that the notion of cause itself was fictitious and illegitimate, that what was said to be causation was mere invariable antecedence and succession.

Two facts are so related that one invariably precedes and another follows. The first we call cause; it is said to cause or produce the second, as when fire is applied to gunpowder we say the spark caused the explosion of the powder; all we really know is that when the spark is applied the other fact

follows. The business of science in the sphere of physics and chemistry is to trace these invariable successions and sometimes invariable co-existences; and in biology to trace these and further the invariable laws of structure, function, growth; to say nothing about causes in the sense of productivity, but only as invariable antecedents. If these successions and co-existences were duly ascertained in all departments of inquiry, we should have a scientific or positivist explanation of the universe. Any other explanation, such as the theological or metaphysical, is fiction and fancy. This last stage, where the mind is satisfied with the ascertainment of invariable laws, invariable successions and co-existences, is the Positive Stage of knowledge.

Phenomena and their laws compose the positivist conception of the universe. We should not ask for its First Cause in the sense of its producer or creator, since we know nothing of cause but invariable antecedent. But we might ask for its history in the past, as in geology or palæontology we ask for the past history of the earth. We are now, according to Comte, in the third and final stage, where our conception of the universe is this positivist one, having outgrown the infantile conceptions of the polytheistic and monotheistic stages, the improved but still vicious and unscientific conceptions of the metaphysical stage; vicious, because fictions, palmed off on us for facts, were given as explanations of phenomena, and because it tended to backsliding to the worse theological stage in new and subtler forms.

We have here the famous Comtist Law of the Three Stages, the Law of Progress through the long past up to now. Our conceptions cannot improve further, though we may discover more facts and laws respecting them. We have reached the final stage, and this very law of the three stages creates Sociology, the last and crown of the sciences, which is to it what the universal law of gravitation is to astronomy. And corresponding to this state of the speculative faculties there will of course be, as there always was, a sympathetic and a corresponding art, a polity, and even a religion, an art and poetry free from its old theological and mythological follies, its Venuses, Madonnas, etc.; and a religion which Comte did not

fully elaborate for some years, but which he afterwards gave to the world as the Religion of Humanity—the love and service of the human species, great men, especially savants and philosophers, taking the place of the old saints in the new calendar.

There is a correspondent new era. The industrial takes the place of the military era, which was suited to the theological stage, but not to the positivist, the age of positive science, which by her incessant discoveries and inventions ministers to industry and the creation and constant increase of wealth. The appropriate government is a republic for all the Western States of Europe. And the true leaders of the people are the new industrial chiefs, the great capitalists, bankers, and employers of labour. These are the natural governors in an industrial régime as regards the temporal sphere; while the spiritual power is to be in the hands of real philosophers, that is, positivist philosophers, freed from all theological or metaphysical taint.

Such was the issue to which the theory that the state of the speculative faculties governs all other interests led Comte, and such his scheme and prophecy for the future. But all this was not quite what Mill bargained for when he first hailed the positivist philosophy in 1842. He expected and looked eagerly for some "law of progress" to emerge from the history of the speculative faculties, or from the philosophy of history. What he expected he did not very clearly know, but that what did emerge was not what he wanted soon became pretty clear. It was a very remarkable generalisation, he thought. It threw a "flood of light upon the whole course of history," yet he felt somehow a great disappointment. Metaphysics following theology was to disappear. This would not have troubled him much, as his metaphysics was never more than skin-deep, mere psychology, the defence by psychology of Locke's system or Berkeley's idealism; and this kind of metaphysics Comte might excuse, though he despised it. Where he really was taken aback was at the suggestion that progress was accomplished, that the definite and final stage of things had arrived, and that all people had to do henceforth was to get into and settle down in their proper place in the positivist

system under a peaceful positivist régime, where no higher prospect offered than the increase of positive knowledge; and all this for a man who believed in an indefinite and immense progress in the future, who believed that men were only at the beginning instead of at the full and perfect day of their career. Mill had looked for some aspiring monition, some fruitful stimulating formula in the law of progress pointing forward and upward, not one that glorified the present and bid us be happy and content under a positive polity. He felt, with the poet—"How dull it is to pause and make an end." A sudden vision of the insipidity of Positivism, as of Benthamism formerly, seems to have come over his fastidious and aspiring soul. While praising Comte's law of the three stages, he says, "I will not discuss the worth of his conclusions, and especially of his predictions and recommendations with respect to the future of society, which appear to me greatly inferior in value to his appreciation of the past." And shortly after (1845) we find him casting his hopes for a law of progress in another quarter. He turns to Guizot's Lectures on History to see if there was there any better prospect of a philosophy of history or a more hopeful law of progress.

§ 6

Meantime he concludes his remarks on the historical method: "Whatever decision competent judges may pronounce on the results arrived at by any individual inquirer, the method now characterised is that by which the derivative laws of social order and of social progress must be sought. By its aid we may hereafter succeed, not only in looking far forward into the future history of the human race, but in determining what artificial means may be used, and to what extent, to accelerate the natural progress so far as it is beneficial; to compensate for whatever may be its inherent inconveniences or disadvantages; and to guard against the dangers or accidents to which our species is exposed from the necessary incidents of its progression. Such practical instructions, founded on the highest branch of speculative sociology,

will form the noblest and most beneficial branch of the Political Art."

We see what great, not to say chimerical, things he expects from the science. It is, however, clear to him that "even the foundations are but beginning to be laid." Nevertheless it was the aim of really scientific thinkers to connect by theories the facts of universal history; "and a general system of social doctrine," it is felt, "should explain . . . the main facts of history." Accordingly, "a Philosophy of History is generally admitted to be at once the verification and the initial form of the Philosophy of the Progress of Society." For his own part he only claims to have pointed out the proper method of investigation and of proof. To others he leaves the achievement of the work.

But have we yet got such a philosophy of history as will explain the main facts of universal history? The fact is, the thinking and educated part of the public have grown somewhat weary of philosophies of universal history, from which so much was expected early in the century. They have learned that, on a subject so vast and various, extending over some three thousand years in time, and embracing twenty perished civilisations, in addition to the expanded civilisation under which we live, itself the result of a vast progression, only the larger events and personages, only what Hegel calls "world historical events" and persons, can be treated: the rise and fall of empires, of religions; the progress of science and invention, and these not in detail but in outline; and although a great thinker and bold generaliser such as Hegel may write an interesting and suggestive book on the subject, yet it leaves much scope for mere private predilection, accommodation to foregone conclusions, to the writer's own general system of thought, to prophesying after the event, not to say, in the hands of others less scrupulous and learned, to downright charlatanry. The result has been that few attempts are now made to write a philosophy of universal history, which Hegel attempted from the point of view of his absolute idealism, Comte from that of his positivism, and which Mill expected to fit into his unwritten

psychology.[1] Another and a more important result has been that the philosophical historians who would deal seriously with themselves have seen the necessity of breaking up the problem dealing with all times and climes into the histories of a particular age (the Renaissance, the Reformation), of a particular leading people (Israel, the Romans, the Greeks), or of a world event like the French Revolution; or they give us the history of progress in one country — a history of civilisation in France, in England, or in Germany.

The new historical school has carried out the process of differentiation and simplification still further, but in a different direction. Instead of considering the historical movement of all the great social interests together, in all the progressive countries of Europe, or even in a single country, the writers have each addressed themselves to a single interest or group of associated phenomena, as law, or economics, or philosophy, or religion, or science, or political institutions, either amongst men generally or in a given community; and they have tried to trace as well the origin as the different stages in their course of development, together with their natural principle of slow growth, or accelerated motion under specific external action, whether of important individuals or other active forces. For that each one of the above social interests has a history, a continued chain of causes and effects, which become further causes, or that according to the biological metaphor each presents the phenomena of change and growth like a living body, most inquirers are now agreed, though it is also held that the analogy may be pushed too far, and not allow for what might be called paroxysmal or sudden growth, due to extraordinary events or men. There is development or change according to law, in which the great men or events may be,

[1] With the biologist, like Herbert Spencer, indeed, mere recorded human history counts for very little. History becomes the natural history or evolution of the genus Homo through lower animal forms, and its subsequent improvement under "the struggle for existence" and adaptation to its environment. The Law of Progress becomes "the survival of the fittest." From this point of view a Philosophy of History in Mill's or Comte's sense is not needed, and the great events and the great men of history alike shrink in importance.

as Mill suggests, links indispensable in the chain, necessary causes of the growth, as when a Mahomet furnishes a new religion and new laws and institutions to a people, thereby causing a sudden growth or development fruitful of further change, which otherwise might not have occurred.

Such are now the aims and practice of the ablest historians. But there is little hope of any science of sociology arising from the united results of their labours, any more than from the ambitious efforts to solve the problem of history in its totality. At most, the labourers are only preparing materials for the grand science, when the master architect appears, in case there happily resulted in each separate history of law, religion, philosophy, political institutions, science, invention, art, and literature, and the organisation of industry, some single law of progress, or a few such laws.

§ 7

Let us suppose it all done, and a good part of it is now done. Let us suppose a philosophical and full history of government from its first germinal appearance in the family or tribe to its present complex and finished form, which supposes also a history of institutions, in ancient civilisations as well as in the chief modern states down to the present time. Suppose again we had a similar history of law, its origin and main stages; of the chief legal topics, property, contracts, the testamentary power, torts, and crimes; as well as of the organs, the judicatures and tribunals, by which law is administered; then of economics in ancient, mediæval, and modern times, showing how the production and distribution of wealth and the means of exchange have begun, varied, and progressed.

If we had these three histories fully written, we should have an explanation of the main facts of law, government, and economics as they exist to-day, as well as the causes of their chief changes and improvements. This work, needless to say, has not been accomplished, but we are in the way of having it done as respects the leading countries. We have legal and constitutional, if not economical, histories. If, in addition, we could reduce existing law and government, and the facts of in-

dustry in their statical condition, to sciences (jurisprudence, political science, political economy), and then show some empirical laws connecting them, *inter se* we might say that we had something resembling a science of society, a reasoned and connected explanation of the history and present state of the things most essential for every society. Now, it is not difficult to show a close connection between the economic and juristic systems in a country, while the connection between law and government is manifest. And if we choose to call such a connected result sociology, I grant that a science of sociology is possible.

Moreover, men have always tried in all societies to make devices to lessen their labour, to multiply their power, to make a given exertion more efficient; their material progress and comfortable living has much depended on their success in this way, and they have attained most extraordinary success —a success largely dependent on the co-operation which society affords. We might therefore include along with political economy a philosophical history of the principal inventions and discoveries. It need not be a long one, except as regards the past hundred and fifty years, during which inventions have been ever increasing in number and complexity; still it would be a truly formidable task, even though the sociologist need only concern himself with the revolutionary and epoch-making inventions and discoveries,—those associated with great names,—and might reject the minor ones. After the first simple inventions of primitive times, the plough, potter's wheel, spear, canoe, he would be concerned chiefly with letters, printing, gunpowder, the mariner's compass, steam engine, the larger discoveries of the last century, and the telegraph, telephone, etc., of the present.

All these things—law, government, industry, and the aids to industry—are shown in every society, are necessary for every social organism for existence, the latter in higher degree for comfortable existence. But from the beginning—a remarkable fact—we find in all societies also religion, belief in invisible spirits, and religious ceremonies and customs in consequence. We may therefore regard man as a religious being, and religion

as one of the essential features of society. It has always existed, and usually with a special class set apart to perform the rites and ceremonies; and religion, which naturally first entered in rude elementary form into rude and simple minds, has changed and improved with the growth of men's minds and with civilisation. A history of religion is thus necessary, though how the conceptions and generalisations, the conclusions to be obtained from it, are connected with those in law, government, and economics, is not so easy to see, and, unless there is some connection shown, sociology would be better without it, though its history is the most interesting and important of all. No doubt it has been a vital social interest. The Church has existed in every society as well as the State, but in later times as an organism separate from the other, and having different aims, the one temporal, the other spiritual.

Then man is an artistic being, but it is only in society that he is induced to cultivate poetry, painting, sculpture. Art is fostered mainly in and by society, though the æsthetic emotions must exist first in the individual. Art begins rude and simple, like all the rest; it improves by effort, but mainly by inspiration; by exceptional men being born and encouraged and then instructing others to a certain extent. Art in all its forms is a social interest; it ennobles and beautifies and elevates society, as it delights individuals. But is it necessary that its history be part of sociology on its dynamical side? We can see in a general way that its history depends on the accidental appearance of men of genius who appear by no law discoverable, sometimes in crowds together, sometimes not for ages. But on the whole there is artistic progress within each nation or civilisation, which generally has to begin at the beginning, and improve through geniuses appearing, if they do appear. A philosophical history of art, of painting, music, poetry, and literature generally, or better, a separate history of each, would be valuable and interesting, and something of the kind we already have. It is not clear how the results or the leading conceptions and generalisations can be put into any kind of relation with the like conceptions and generalisations of the more obviously essential and really connected social interests.

Society has emotions, and admires the beautiful. And art and poetry flourish best where law and good government and abundant material wealth exists, so as to ensure a cultivated and leisured class capable of encouraging and enjoying art. A poor country will have little art, because it has no leisure. A rich country, on the contrary, like Rome, Greece, and the modern civilised nations, will cultivate art. A few rather obvious generalisations can be made, but on the whole there is little connection between it and the other interests, except religion, by which it has been more stimulated than by anything else. Music, painting, architecture have vied with each other, have put forth their greatest efforts in honour of the Deity or deities. But on the whole, though a high social interest, art does not seem an integral part of a science of sociology.

The chief social interest, and the central one which *does* influence all the rest, is the state of the speculative faculties, as Comte and Mill have stated; the state of science and philosophy, let us say for brevity, science, as in their infancy they were one, and only became two in modern times. It is a fact, as Mill says, that increased scientific knowledge changes religions; it is a fact that within the past three centuries it has wholly changed our conception of the universe; that it leads to and gives new scope for inventions; that speculative philosophy, the theory of natural law, revolutionised Roman laws and improved our own; that government has been profoundly affected by it in all modern countries; that Bentham's utilitarianism has done for us more recently a similar service. The scientific spirit has affected invention, industry, religion, law, and government, everything but art and literature, which it has only indirectly affected by its influence on religion, and by its furnishing hopeful and stimulating suggestions, and wonderful "fairy tales" for art and literature to meditate upon.

Since, then, it is the central social interest, and affects all the rest, perhaps the history of science and philosophy, the history of the human intellect, should be a part of dynamical sociology. But if so, it should be the history of the sciences in serial order as Comte gives them,—mathematics, astronomy, physics, chemistry, biology, not of course a minute or exhaustive one,

like Whewell's *History of the Inductive Sciences.* There should then follow a history of philosophy down to our times, when, instead of being based on vicious abstractions, it uses only conceptions having real and scientific contents; but philosophy can only be considered a social interest in so far as it has improved law, produced ethics, and corrected religion and our conception of the universe and the Power behind or immanent in it.

But if sociology includes histories, even condensed ones, of all these things, especially the last, down to our days, it would be a very formidable work for any single person to undertake, or rather a work impossible to achieve, if others did not provide materials in previous fuller histories; and these have not yet been provided in all departments. No wonder then that Herbert Spencer, who alone, since Comte, has essayed the formidable task of constructing the science of sociology, though he has given good and well-generalised histories of political institutions, of ceremonial institutions, of industry, has shrunk from the task of attempting the same with the intellectual and æsthetic histories, while he has only given us the early stages of the history of religion.

But even if the task had been fully finished, and he had given us his generalisations from the history of science and philosophy and æsthetics, the results would rather be parts of his Philosophy of Evolution than of a special Science of Sociology. For the idea of science implies a unity, a body of connected phenomena, articulated together and reduced to unity, under one central principle if possible. In the present case we have diverse phenomena which cannot be unified in their totality. If indeed religion and philosophy were abolished from the list as illegitimate subjects, then all the rest, except art, could, as we have seen, be connected with the scientific spirit and its history, and sociology might then include the history of these four,—government (including law), industry, invention, and intellect or the scientific spirit which governs them all.[1] There would thus be a sort of unity, and all these

[1] The latter is very nearly Comte's view. But it is not Herbert Spencer's who admits religion and philosophy as legitimate subjects of thought.

subjects might be called sociology. But when religion, philosophy, and art are further introduced, I do not see how any possible unity nor consequently how a science can result. They may be placed alongside the other subjects. A common method of inquiry may be applicable to all, and a certain connection with the contemporary state of the human intellect may exist; but that is not sufficient to make such heterogeneous things into one science. And even if all the rest could be unified under the hegemony of the speculative spirit, art will always be found separate and irreducible, because the object of the latter is the beautiful, which is fundamentally different from the true, the useful, the just, all of which are within the province of the intellect or speculative faculties.

There is, moreover, this further to be said, that, even if we omit general history, a science that is to contain, even in outline, a history of all the sciences, all the inventions, all the philosophies, metaphysical, moral, legal, and political, all the religions, all the fine arts, all the languages and literatures, and which further requires a knowledge of the general conditions and mutual relations of all these subjects of thought, is so impossible of realisation by any one single person, that it would require either omniscience or all the experts of the world pressed into the service to produce a sociology under this conception of it.

§ 8

But, under any conception of it, sociology implies that social phenomena are subject to laws, just as in biology there are laws that never fail to operate. Now it would appear, since social phenomena depend on men's actions, and these on their nature, and as men's natures, their intellectual and moral and emotional qualities are very different, and some men are of far greater force and stature than others, in one sphere, bending and controlling others' wills, or making a great invention that never would have occurred to the rest, writing a grand poem, laying the foundation of a science,—it would appear as if the course of civilisation and progress very much turned on the

appearance of these superior spirits in these several spheres of human activity, and that the rest hardly counted at all.

It is certain that great improvements in laws and institutions were made by superior minds — by lawgivers like Manu, Lycurgus, Mahomet—even though the multitude might spontaneously originate customs from convenience.

It is certain that the first inventions did not occur to everyone, nor the subsequent improvements. A rude plough or spear might have been invented by many,—not the invention of letters, nor the art of tempering metals, nor in later times the spinning-jenny, the steam engine, nor the electric telegraph or the telephone.

In like manner the foundations of the sciences themselves were laid by men of original capacity, and they were improved by similar men. The same is true of philosophy in all its branches, and even of religion; its first founders were extraordinary persons, mostly thought to be divine or semi-divine; and the like, though in less degree, applies to the great reformers.

As for art and poetry, it entirely moves forward through men of genius, only that here there is no improving on their work, though they may arouse in the rest something of their own frame of soul.

Still more, the course of universal history has appeared to turn at certain great crises on the appearance of one man—a Julius Cæsar, a Constantine, a Mahomet, a Charlemagne, a Luther, a Napoleon, a Bismarck. Now if all this be so, the history of progress would seem to turn very much on such men. Any law of progress that can be laid down, it would seem, must be in a special manner connected with them. They are great social causes. They are great sociological facts as Comte regarded them. They should be special matter for sociology to inquire into. To calculate the effect of what they have done, to estimate the chances of their appearance, to find by what law they made their appearance in great numbers in the sixteenth and seventeenth centuries, while rarely one appeared for ages before; why again a swarm of poetical geniuses appeared early in this century, after a barren and dreary century in poetry,—such as these should be amongst

the problems of the social science, or at least of the philosophy of history, as they are the most interesting, whether so considered or not.

This question of great men in their relation to progress was raised by Mill a long time after his speculations on sociology in his *Logic*. About 1860, in a later edition, he raises it for the first time with reference to Buckle's *History of Civilisation*. He has learned somewhere that the course of civilisation has turned on the appearance of great men, and he pauses to consider how the fact can be reconciled with the reign of general law in the sphere of social phenomena, and in history, which must be viewed as a natural series of events without anything mysterious or providential. His solution is that "such men may be indispensable links in the chain of causation by which even the general causes produce their effects"; and he adds, "I believe this to be the only tenable form of the theory. Without Mahomet no Averroes or Caliphs of Bagdad or Cordova; without Newton no Newtonian philosophy, at least until there had been another Newton or his equivalent. It might have been produced, perhaps, in successive steps by inferior men coming after him. But even the least of these steps required a man of great intellectual superiority." The influence of a great man (or of a good government), of a Confucius, Lycurgus, Luther, Themistocles, Julius Cæsar, he allows, but he thinks their influence tends to become less as compared with the broadening stream of other forces, and with the result that historical science becomes less subject to the disturbing influence of great or revolutionary characters.

He is doubtless largely right as to this. Great men will play a less important, less decisive part in the future course of civilisation, but I should be disposed to give a different reason for it than that which he assigns.

The fact is that the kind of great men that have been needed in the past to lay the foundation, to construct, and all but complete the different sciences, will be no longer necessary for this part of progress or civilisation. A Newton is no longer necessary now that his work is done and astronomy nearly a completed science, and if a man like Newton were now born

he would not find adequate scope for his genius. The like holds in the mathematical, physical, chemical, and biological sciences, though perhaps not to the same degree. The work of the Laplaces, Youngs, Faradays, Lavoisiers, Darwins, Joules, and Kelvins, of the creators, is largely done, and only the lesser work now remains to be done. Only the gleanings of the harvest are to be gathered, except perhaps in chemistry, where a new element with new possibilities connected with it may still remain to be discovered; or in physiology, where there is still some work left for another Claude Bernard.

Again, if a potential Columbus were to come, there would be no New Worlds for him to discover; the most he could hope to do would be to reach the North or South Pole, or penetrate to one of the few remaining unvisited parts of Darkest Africa.

It would be hazardous to affirm that there will be no more great philosophers after Kant and Hegel, especially as able men are still trying to construct new systems, but perhaps it would be safe to say that there only remains to incorporate with the best past speculation the results and conceptions of the physical and chemical and biological sciences to get as far as men are likely to get in their conception of the universe and of its cause. But in moral and political philosophy discoveries certainly remain to be made, in spite of the fact that both are as old as Plato and Aristotle, and in particular that the ablest minds in England have devoted themselves for more than two hundred years to the subjects. As yet there is little unanimity, in consequence little of what can be properly called science (though it may be called philosophy); less than might have been expected, especially in moral science, making all allowance for the complexity and subtlety of questions in their moral aspects that daily arise. More agreement is certainly required on the broader and rougher and more recurrent topics that concern law and politics as distinct from those relations of life which are too delicate and impalpable to be dealt with by positive law or positive moral rules. In these cases moral science will always be a most difficult science to apply in practice, owing to the complicated

and sometimes contradictory considerations that have to be taken into account, where, in fact, there may be no rule applicable to the case, neither the utilitarian rule, nor the rule of conscience, nor the rule of opinion.

As for great poets in the future, such may come, as they have come in the past, but the conditions do not repeat themselves. Great poets appeared in the Elizabethan age, partly because it was a hopeful and exciting age,—with new continents, new doctrines in religion, new theories of the earth and heavens, new learning, new sciences,—all conditions which can never again recur. Add the fact that the English language had become a perfect instrument for the poet, and the national mind sufficiently expanded to relish his work, and we have a set of conditions specially favourable to the appearance of a great poet like Shakespeare, though they do not account for him—what science could explain him? Again, at the end of the last century and first quarter of this, we had favourable conditions: a new love of nature (how produced we do not inquire); new golden and partly chimerical social hopes; marvellous discoveries and inventions; and accordingly we had many great poets—Burns, Byron, Coleridge, Wordsworth, Shelley; and the last who felt the new impulse, Tennyson, is only gone. When can we expect another? It is not easy to say. Perhaps when the state of religious thought is more favourable; when the materialism, scepticism, pessimism have given place to more robust beliefs; when faith, "all but lost in the doubts that darken the schools," again emerges from its temporary eclipse, a great poet may again appear; especially as nature is still as beautiful as when Wordsworth discovered her, and life is as varied, its tragedy as heart-shaking, and its comedy as interesting as ever.

Great statesmen are less to be looked for in so far as part of their work has been already done in the unification and consolidation of the greater States. The work of Napoleon, of Lincoln, of Cavour, of Bismarck, during the present century, does not require to be done over again. But the great and populous States of the near future will give rise to new problems, both internal and external, and their conduct will

demand statesmanship, though it may be of a different order. Germany may require a statesman to maintain her unity, as she needed both a great statesman and a great soldier to achieve it. England may require one to effect the federation of her great empire; while the very vastness of the Russian Empire, with its points of contact with so many other States, both strong and weak, together with the peculiar character of her only half-civilised multitudes, will require statesmen and administrators of high capacity. Moreover, in all these great States there are important internal questions as to the relation and welfare of the different classes which demand knowledge and wise and skilful handling; so that, on the whole, one is inclined to think the call for able statesmen and rulers will not be less urgent in the future than in the past.

It is not quite the same as respects the great soldier, who will probably play a less important part in the future. For war has conferred on mankind nearly all the benefits it was in its nature to give. It has united men into large kingdoms and nations, within which the arts of peace and of civilisation have been fostered, and it has developed certain important and necessary virtues. It has largely done its necessary work; and were mankind solely governed by reason and the sense of their interests it *should* cease. At present there are less real reasons for war between civilised States, though there may be some. There may be justifiable wars as of old, "to preserve the balance of power," to prevent one State from becoming too great, and therefore dangerous to the independence of its neighbours. Wars may even arise regarding the division and appropriation of the States of "sick men," whether at Stamboul or Teheran or Pekin, though such wars ought not to arise, because an understanding can always be reached in these cases much better and much less expensive than a settlement by the sword. There might be a war between France and Germany, or between Russia and Germany; still wars have diminished in our century since the Great War, and they will diminish more in future, partly because the very success of science and invention in devising new methods of destruction tends to do away with them as too terrible and deadly, while the general

pursuit of wealth and the mutual commercial interests of nations tend in the same direction.

What we see in the past is that progress in the chief branches of human effort has depended, in addition to the chances of history, on a succession of more or less great men, each succeeding one of whom saw farther and clearer, did better than his immediate predecessor. This applies to all the sciences, to invention, in part to philosophy and religion, much less to art. It is also true that a part of the process of civilisation cannot be referred to individual men at all, whether great or small. The slow evolution of language as a more perfect instrument of speech and thought was not the work of any one, but of many. The evolution of laws and customs unconsciously by people in general and no one in particular are other instances. Still, as Mill contends, the greater part of civilisation is referable to the succession of great men. And now it appears that in certain important directions we have got nearly as far as we are likely to get.

We are perhaps within a measurable distance of the time when science will be complete, philosophy finished, and when the "war-drum will throb no longer," when in consequence neither the creative savant, original philosopher, nor the soldier of genius will be longer necessary or even possible for want of sphere: must we say that progress will be then finished? that man will have then achieved his destiny on the planet, so far as improvement is concerned? In one sense, Yes; and Mill's notion of indefinite progress in all directions, conceivable and even inconceivable, is visionary. For we know all the possible directions within which progress or effort is possible. We have already indicated them more than once. They are, science, government, art, philosophy and religion, industry and invention. Now science is nearly completed, art in all its branches has probably already reached its highest culmination. We shall not probably transcend Shakespeare, or Beethoven, or Michael Angelo. We shall not get much further than Spinoza, Kant, or Hegel, though a system may appear which will give more life and reality and pertinence to their abstract thought by means of conceptions supplied by science. This

only remains to be done, and it has been partly done; and when it is fully done, and when Biblical Criticism has said its last word (we are nearing that issue likewise), in what direction can we go further? It would seem as if only invention were left. Apparently we can have new inventions indefinitely, new practical appliances to increase our comforts, conveniences, and power over nature.

Material progress is still possible, of the same kind as the steam engine, telegraph, telephone, and the thousand lesser inventions. Wealth can be increased and new processes discovered for creating more wealth. All the practical arts can be further improved, both those that add to wealth, comfort, luxury, and those that add to health, such as medicine and surgery. The industrial organisation can be improved. Perhaps the social organisation which has spontaneously developed can also be somewhat improved. But here Mill, though he hopes for much, has in his mind a distinctly retrograde and indeed impracticable and chaotic hope. He expects classes to be more or less levelled and the great employer of labour and the great capitalist to disappear—a point on which Comte, who perceived the tenacity of a relation nearly as old as human society, the relation between master and servant and between employer and employed, had much sounder ideas. But Mill is right on one point. He thought that human character may be improved, which is true, though the work is slow, but just because it is slow the process will occupy a long time. We have acquired much knowledge. We have amassed vast wealth. What is wanted is a wider diffusion of the results of civilisation—the knowledge and the culture—perhaps also the lessening of the inequalities of wealth, though not at all to the extent dreamed of by Mill. And he is again right in believing that we all want, the rich as much as the poor, an improved art of life, an art to teach us both how to make life higher and better, and how to make the most of it both for ourselves and others; a kind of knowledge, a species of practical science or art in which we are all much unlearned, to which Mill refers in terms of high praise, but of whose precepts he has taught us little.

Until men are morally raised, and until this much-needed art has been learned, it will be too soon to say that progress is finished, and that all that men have henceforth to do is to settle down to count and enjoy their gains;—though it is true that progress is more limited, has less varieties than Mill supposed, and in some important directions has nearly reached its limits.

§ 9

We may say, finally, of Mill in relation to sociology that he had a very imperfect conception of the science he invoked; that he only caught partial and successive glimpses, without ever having a clear, consistent, and steady conception of it. In this particular field his mind was essentially barren; and though he has been praised for his discussion of the appropriate method of inquiry in the moral and political sciences, his view as to method is as vacillating and uncertain as his view of the subject itself. He was always on the lookout for someone to give him light, and always in the end broke away from him. First Bentham in ethics and politics, then, his narrowness being discovered, Coleridge as a corrective; then he turned his eyes abroad to the German, Herder, to the French philosophical historians, Michelet, Guizot, Comte, the last of whom had, on the whole, the greatest influence over him. Finally, in his wife he affected to discover the greatest philosopher of all, to whose "all but unrivalled wisdom" he ascribed all that was best in his own writings. We see the same unsteadiness of view with regard to political economy, which he considered as a branch of sociology. We note first his reverent admiration for Ricardo as the "creator" of the science; then we observe his doubts and corrections of Ricardo's doctrines in his own work; then the throwing over of two of his own fundamental theories, which had been attacked by Mr. Thornton; his change of view as regards peasant proprietorship; his advocacy of co-operative production under the influence of Louis Blanc and the Owenites, which, if his views had been correct and his predictions fulfilled, would have resulted in a vast social and economic revolution; lastly (and this is only

a further extension of his views on co-operation), his surrender of the whole existing economic and industrial structure, including private property, the slow evolution of ages, to the views of the Socialists.[1] It has indeed been well said by Dr. Ingram, after Roscher, that he had not the true historical intellect, for history puts its most emphatic protest on these opinions. But he is really a remarkable social philosopher, and unique, for his facility in changing his views, philosophers being usually so obstinately wedded to them.

This as regards social and economical theories. Something similar holds, though to a less extent, as regards his view of morals. He accepts Bentham's utilitarianism and does battle for it against all comers; against Professor Sedgwick of Cambridge, a poor champion, whom he leaves dead upon the field;[2] against Dr. Whewell, a formidable fighter, whom he has met in other fields, but over whom he appears to get a decided advantage in his defence of utilitarianism as the morals of progress as opposed to intuitive morality, the morals of prejudice and reaction, for so he respectively regards them.

But, very strange, a few years after, when writing his *Utilitarianism* and giving his own version of it, we find that he has been largely converted by Dr. Whewell and other such writers; he incorporates important portions of their system with his own; claims conscience and moral sense as part of it; defends devotion and sacrifice,—all of which are wholly alien to Bentham's utilitarianism.

On democracy, however, he remained staunch. Still, in 1861, when writing his *Representative Government* he discerns its dangers, and he is busy devising safeguards; and from the nature of the man it would seem that there was only required some resolute friend on the opposite side, like Carlyle, to turn him into the opposite camp. But at the time he had become estranged from Carlyle, and his wife's influence, who was of more fixed and fervent faith, held him fast to his old

[1] See his *Autobiography*, p. 321; but we do not know the precise date at which he wrote this, and his latest works published during his lifetime indicate rather different views.

[2] *London Review* (1835). Republished in *Dissertations*, vol. i.

democratic convictions while she lived, as the memory of her did after she was gone.

But, indeed, provided democracy allowed a dear mistress that he loved called liberty, the right of each to the largest possible sphere for the expansion of his own unique nature, to be free as much as possible from all restraints save what that nature prescribed, he cared little for its possible attacks on property, so far as himself was concerned, though a good deal so far as regards the public. Give this sort of liberty to him and you assure the main thing; take it away and even in celestial mansions the soul of Mill would have been in a prison.

All else he was prepared to yield up for the common good, even private property, but not this: not the freedom of the individual spirit that, in addition to its relation to its fellows, feels itself a free imperial spirit in its own private spiritual domain, that none should invade; with a unique personality that asks the largest space for expansion in its own way; free as much as possible from the pressure of laws, much more from the yoke of general opinion in matters not concerning the public, but in which it tends to interference. This sphere, the sacred citadel of self, he wished more free from intrusion and invasion than the Englishman's house; and here he was right, and in his little book on *Liberty* he has spoken the last word on this important subject.

II. ON REPRESENTATIVE GOVERNMENT

§ 1

After a long interval Mill again appeared before the public in his *Considerations on Representative Government* (1861), a work of the same nature as Bentham's *Plan of Parliamentary Reform*, because he pleads for further reform, but a more systematic work, going much beyond Bentham's ideas and correcting some of his mistakes.

Since the appearance of his *Principles of Political Economy* (1848) Mill had learned a good deal from the teaching of the new historical school, and something from disappointing experience. We hear no more of the grand science of society, with its appended noble application to political art; no more of some wonderful law of progress gathered from past history that was to govern and assure the future; no more of the elevation, material and moral, of the working classes, and the bringing in of the reign of social justice by the simple device of co-operative production, under which the labourers become their own capitalists, with the consequent disappearance of the great capitalist employers.

His great expectations were disappointed, and he was himself somewhat disillusioned and sobered. Still it is a great thing for a man to have wished to save mankind, and to have devoted twenty years of enthusiasm to the task, even though he fails. It is a good thing to have aimed at solving the formidable and ever-present problem of poverty, even by so unlikely a means as Malthus' principle of population; to have wished to raise the condition of the toiling many, though by a chimerical scheme of co-operative production; to have desired to point out the path to truth and well-grounded belief, though

by such unpromising means as a new theory of logic, in which, as regards the most important half of his subject, the whole field of moral and political science, he shows himself in a fog as to the nature of the subject, and still more as to the logic of it, the appropriate method of inquiry and proof.

He had reached the age of disillusion in most men when writing the *Representative Government*; and the book shows some signs of it. It is set to a much more modest key than his two former ambitious books; it has no great hopes; there is no jubilation at the coming triumph of democracy, but, on the contrary, some apprehensions that the labouring classes may try a shorter way to raise their material condition and get the command of capital than by his plan of co-operation, which he appears to have forgotten. On the whole, it is a good and sensible book, marked by clearness, common-sense, and in places by a certain practicalness, due rather to the permanent official and his contact in the India Office with political questions in their living and actual state, than to the speculations of the political thinker. Only in two places his old tendency to illusory hopes still appears: where he expresses his faith in the educating influence on the citizens of some participation in political functions and political discussion, and again where he thinks that the representation of minorities and plural voting would be an effectual check on possible democratic tyranny.

Representative government is ideally the best, he thinks. But a preliminary question arises. Have people any choice in the matter of their government? Can they choose the best government, if only they were assured of what was the best? For if not, there would seem to be little profit in proving the merits of a particular kind. And there is a school of political thinkers, the new historical school, which holds that a form of government is the result of a people's history and temperament, is the outcome of the strongest and most influential social forces; and that a people must accept the government they find themselves under as the most suitable and the best for them; that "constitutions are not made, but grow"; that, therefore, great revolutions and organic reforms in government are evils; finally, that nothing can be done by legislation or

constitutional changes, except to mitigate the evils that accompany all kinds of governments. And he might have added that the same school holds that law is a necessary evolution, largely popular in origin, much the same under whatever government, and by consequence that laws, as well as governments, are, after the long human experience of the species, nearly as good as they can be, though new laws may be required for new circumstances.

The general view of the historical school was at first very distasteful to the ardent and reforming character of Mill, full of Utopian hopes of progress to be made solely by the reform or abolition of "bad laws and institutions." For according to this view the bad laws and institutions are half absolved, sometimes are relatively good, so that the reformer's enthusiasm is checked, and he must in reason carefully weigh and select before he attempts to destroy. In fact, the new school is largely a justification of Burke's defence of society and existing governments, as contained in his *Reflections*. Accordingly Mill sets himself to combat the views of the historical school in the first chapter of his book, "On Forms of Government, How far a Matter of Choice"; but in fact he is half-conquered by them. Still he continues to argue. He denies the position of the historical school, that "forms of government are not made, but grow." The form of government *is* a matter of choice, of will and purpose, if three conditions are fulfilled. "The people for whom the form of government is intended must be willing to accept it; or at least not so unwilling as to oppose an insurmountable obstacle to its establishment. They must be willing and able to do what is necessary to keep it standing; and they must be willing and able to do what it requires of them to enable it to fulfil its purposes"; the word "do" being used in a wide sense, including to "forbear" from doing anything opposed to these conditions.

These are large concessions to the historical school, or as he prefers to call it the "naturalistic theory of politics." It results from them that some races, like the Swiss or the people of the United States, could not endure a monarchy; nor others, such as the Russians, the Turks, the Chinese, the

Hindoos, Asiatic peoples in general, a constitutional monarchy or a republic. Others, again, may prefer a free government, yet if they are unequal to the exertions necessary to preserve it, or will not fight for it if it is attacked, or if they allow themselves to be cheated out of it and lay their liberties at the foot of a great man;—in all these cases they are unfit for liberty. A rude and warlike people may require a despot to keep them in order; a timid, passive people, like the Hindoos, for the opposite reason, need a master or a paternal ruler. In parts of Europe where the people are revolted by an execution, but not shocked at an assassination, the public authorities must be armed with sterner powers of repression. But again, and this strikes nearer home and concerns ourselves: "Representative institutions are of little value, and may be a mere instrument of tyranny and intrigue where the generality of electors . . . do not bestow their suffrages on public grounds, but sell them for money or vote at the beck of someone who has control over them, or whom, for private reasons, they desire to propitiate."

It would seem to follow from these considerations that a people has small choice in the matter of its government, and cannot easily be induced to embark on untried political paths. But Mill thinks that people can learn new things, can entertain the idea of new and better political institutions, the power of adaptability of the people being "one of the elements of the question"; and this last would seem to be borne out by the fact that in this century most of the older and more civilised nations of Europe have adopted parliamentary institutions more or less after the British model.

To the objection that "political forces are not amenable to the direction of politicians or philosophers, that the government of a country is fixed and determined beforehand by the distribution of the elements of social power," and so much so that whatever is the strongest power in society will obtain the governing authority, Mill replies that the statement is true, but requires limitation. The strongest power cannot mean mere numbers, mere thews and sinews, because in that sense, as the people are the most numerous, pure democracy would be

the only government. Property and intelligence must be added; but even then, though nearer the truth, it would not be the whole truth, for a weaker party in numbers, wealth, and intelligence, by the mere possession of the government may long maintain predominance, though the position would be one of unstable equilibrium, which, if departed from, could not be easily restored.

There is a stronger objection, he thinks, to the historical theory of government. Those who wield the power in society are influenced by opinion, and a person of strong beliefs is "a social power equal to ninety-nine who have only interests." A philosopher who can persuade people that "a certain form of government, or a social fact of any kind," is preferable, has done much towards ranging the power of society on his side. Time may do all the rest. When the first martyr was stoned at Jerusalem his party was the strongest, for so it turned out. Luther, at the Diet of Worms, was a more powerful social force than the Emperor and all the princes assembled. And in politics "speculative thought is one of the chief elements of social power." The eighteenth century in its second half showed liberal reforming princes and emperors; even the pope was a reformer, while the French *noblesse* were penetrated with the new liberal philosophy that was to destroy them. Moral conviction, as well as speculative thought from which it usually results, is a social force. It abolished negro slavery. When the educated portion of the community are convinced that "one social arrangement or political or other institution is good, another bad, very much has been done towards giving the one and withdrawing from the other that preponderance of social force which enables it to subsist"; because the educated classes have much influence over the uneducated portion of the community.

We have here a great advance on the absolute position, and the abstract method of Hobbes and Locke, the latter of whom declared that in no case was absolute government legitimate. With the historical school, as with Mill, who so far agrees, it may be the best, it may be absolutely necessary, and therefore legitimate. He is still more away from the position of Hobbes,

who in all cases prefers an absolute government to a representative one, and who defends his views by striking reasons. According to the new view, what is best for one people is not therefore best for another. What is best even for a particular stage of one people is not best for another stage of the same people. Representative government is ideally the best for an advanced people, but not for all such, *e.g.* not for a people like the French. Even with the few nations which it does suit, it requires safeguards to prevent it from being a bad, nay, the worst government.' And these views of the relativity of the kind of government to the people and their stage of progress he tells us he had learned from the historical school of this century, though as a matter of fact they had been vaguely anticipated by Burke.

§ 2

He next raises the question of the true criterion of government. How are we to judge what is a good government, what is a bad one? The criterion cannot be that it harmonises order and progress, as Comte asserts, or permanence and progression, as Coleridge puts it. For what do we mean by order? Is it obedience? This is indeed a condition of obtaining other good from a government, but not a good in itself. But perhaps order means the cessation of private quarrels, as manifested in a law-abiding people. This sense, like the former, expresses merely a condition of government which may be fulfilled, and yet the government may be of the very worst kind.

Suppose we define order "as the preservation of all kinds and amounts of good which already exist, and progress as consisting in the increase of them." But in that case the conditions of progress and order are not opposed but the same, the only difference being that more is required for progress than order. The same qualities in the citizen, the same social arrangements, a good institution of police, a good judicature which promotes order, is also one of the things most conducive to progress. So of a good system of taxation and finance. Consequently these are not two opposed ends of good government, since progress implies order.

Shall we, then, say progress alone is the end of government? It is, in fact, "metaphysically defensible" to say so; but it only suggests part of the truth, though it contains the whole. It suggests improvement, while it is just as important to prevent decline; the same causes, the same qualities, being required for both.

Since, then, the commonly accepted division of social requirements into order and progress is unscientific, we ask, What are the ends that a good government should propose to itself? The best government, according to Mill, is that which best tends "to promote the general mental advancement of the community, including under that phrase advancement in intellect, in virtue, and in practical activity and efficiency"; and which best organises "the moral and intellectual and active work already existing, so as to operate with the greatest effect on public affairs. . . . Government is at once a great influence acting on the human mind, and a set of organised arrangements for public business; in the first capacity, its beneficial action is chiefly indirect, but not therefore less vital." Any government which does these two things best—which raises the mental nature of the unit, and which employs the best means for the public business of the State—is best.

As to these two, the last, he tells us, is nearly the same under all governments and at all times. Laws of property, principles of evidence and judicial procedure, systems of taxation and financial policy under all civilised governments, tend to be assimilated.[1] They are related to certain sciences—general jurisprudence, principles of civil and penal legislation, political economy; and there is a tendency in the most enlightened governments to follow the precepts suggested by these sciences. Of course they would not apply equally to all states of society, but they could be adapted to any where the rulers were so far advanced as to understand them.

It is far otherwise in regard to the other function of governments as a means of raising the character and intelligence of the governed. From this point of view institutions and governments require to be "radically different," according to the degree

[1] Chap. ii. p. 35.

of advancement of a people. The government that would suit advanced would not suit backward races. Races and tribes exist in all stages of advance, some being little above the lower animals; and the kind of government is the most important of the agencies, next to religion, in helping them to advance further. The one thing needful in a government is that its action is "favourable, or at least not unfavourable, to the next step which it is necessary to take in order to raise them to a higher level."

Hence a people in a state of savage independence needs an absolute ruler. Even to reconcile brave races to monotonous industry instead of to war and rapine required a despot, and even one who would compel them by force to labour. Slavery was even a necessary institution at one time (and, according to some, marked a stage of advance on the previous system of the massacre of prisoners). But to lift higher a people in a state of slavery required a less stern despotism than was necessary for a race of savages. They have learned the lesson of obedience, but, left to themselves, they are helpless. A paternal despotism after the pattern of the St. Simonian socialism, or the government of the Incas of Peru, or the Jesuits of Paraguay, best suits their case.

In general, the best form of government, from this point of view, is that which most favours further progress, bearing in mind that progress implies conservation of the good already gained, as well as the attainment of further good. Savage tribes progress when they have learned to obey, but not if the obedience makes them slaves. More generally, a government, even though it might carry its people through one or two stages, would still be a bad one if it unfitted them for further progress, as the Egyptian hierarchy and the Chinese paternal despotism did, because under them mental liberty and individuality were starved. It was just the opposite with the Jews, owing to the inestimably precious unorganised institution of the Order of the Prophets, through whom further moral and religious progress was made possible, and also with the Greeks, who by their free play of mind made progress in philosophy, science, and art.

On this question of the most suitable form of government, we must take into account not merely the next stage, but all possible future stages. Hence an ideal of the best form must be framed, that is, of the kind of government which would be most favourable to all future stages of progress, and all kinds of it, provided the necessary conditions existed to give effect to its good tendencies; next, the mental conditions necessary in the people to enjoy such a government should be pointed out, as well as the defects which make it unsuitable to some people. The ideally best form of government is some form of the representative system, though it is not of course adaptable to the circumstances and mental condition of all communities. He thus avoids the mistake of Locke and the political thinkers of past centuries, whose abstract and unqualified arguments would equally prove it the best government for Malays and Bedouins, or savage tribes untamable as tigers, except by a strong dominating personality.

§ 3

There are some who think (like Carlyle) that if a good despot could be always available, despotic government would be the best. This Mill considers a most pernicious misconception, and one fatal to all sound speculation on government.

It is supposed that under the good despot the best laws would be made, bad laws would be repealed; the most upright judges would administer them; justice would be pure, taxes light and equitable; the fittest persons would fill all offices and places of trust. Let us grant all this, though the concession is much. But the despot would have to be not only a good ruler, but an all-seeing one, to realise it all. No one man would be equal to all the necessary work of supervision, the immense work of administration; he would therefore have to discern and to select many honest and able men to conduct business, also the few eminently able and honest men that could be trusted to supervise wherever he could not do so himself. A man of extraordinary ability and energy is postulated for all this power of selection, and all this labour—in fact, the good despot would shrink from

the herculean task, unless he felt that greater evils would result by his so doing. Suppose even that we had the good despot, we have only one man of superhuman mind and energy managing all the affairs of a mentally passive people, who exercise no will or thought in regard to their collective interests. All is done for them, decided for them, by a will not their own, which under penalties they must not disobey. But what kind of human beings would be formed under such a system? They could not use their intellects on any speculative question that even remotely touched politics. They might, perhaps, make suggestions on practical matters, which would probably not reach those in power or would not be regarded by them. Who in such circumstances would take the trouble to think, when their thought would have no outward effect? and who would qualify for functions they could never hope to exercise? Mental exertion will not be made if no outward results are likely to follow. Still there may be some intellectual life under such a polity. The common business of life will call forth some. Savants may cultivate science for pleasure or profit. There will be a bureaucracy of public officials, who must receive some empirical political education. There may even be an organisation of the best ability of the country in some special direction favoured by the despot, most commonly war. But the general public remain without information and without interest on the greater matters of practice. Such knowledge indeed they may have, as one may have of a mechanical contrivance from reading about it without ever handling one. Patriotism in such a case dwindles and dies for lack of nourishment; action is the food of feeling; and if there is nothing a man can do for his country, he will not care for it. The despot, as has been said, is the sole patriot in his country. Religion, indeed, remains, but in such circumstances it ceases to be a social concern, and becomes a personal affair between man and his Maker, which shuts its votary as much out of human sympathy as sensuality itself.

Philosophical speculation may perhaps remain for a few minds "who take an intellectual interest in speculation for its own sake." The great majority will give themselves up to

material interests, and, these assured, to the "amusement and the ornamentation of private life"; all which means, if history teaches anything, that the era of national decline has set in, that is, if the nation had ever reached any considerable degree of progress from which to decline. Thus Greece and Rome under despotism fell after a few generations into the stagnant condition of an Oriental State, which does not always mean stupid tranquillity with no danger of anything worse, but probably conquest and reduction to slavery by neighbouring vigorous barbarians, who had maintained their freedom and the energies associated with it.

Such are the essential tendencies of despotic government, unless the despot tempers his despotism, which a despot may do, and by doing which he would do away with many of the objections urged against despotism. But this situation would invite a conflict between him and the people, which could only have one ending—that, namely, of constitutional royalty. The despotism would then be chiefly nominal, and would realise neither the advantages of despotism nor those of freedom.

"There is no difficulty," he thinks, "in showing that the ideally best form of government[1] is that in which the sovereignty or supreme controlling power in the last resort is vested in the entire aggregate of the community; every citizen not only having a voice in the exercise of that ultimate sovereignty, but being at least occasionally called on to take an actual part in the government, by the personal discharge of some public function, local or general."[2]

Such a completely popular government, he thinks, is more favourable to present good government, and tends more to elevate the mind and character than any other. This, he thinks, can be easily shown. For the interests and rights of the majority are only safe from evil at the hands of other classes or interests if they are in a position to stand up for them, as they are in a popular government, and in that alone; and secondly, the general prosperity of a nation depends essentially on the self-depending, self-helping character of the people, and not on what

[1] *Representative Government*, chap. iii. pp. 45–48.
[2] *Ibid.* p. 53.

others, including the agents of a well-disposed despotism, can do for them.

Through the influence of these two principles he argues that free communities were freer from social injustice and crime, and also more prosperous than any others, or themselves after they lost their freedom. This is clear if we contrast the free States with the contemporary despotisms or oligarchies, "the Greek cities with Persian satrapies, the Italian Republics and the free towns of Flanders and Germany, with the feudal monarchies of Europe; Switzerland, Holland, and England, with Austria or ante-revolutionary France. Their superior prosperity was too evident even to have been gainsaid; while their superiority in good government and social relations is proved by the prosperity, and is manifest besides in every page of history."[1]

It is true that in no nation had freedom been enjoyed by all the people, not even in England or Holland.[2] But every extension of freedom is good, and the participation of all in the benefits is the ideally perfect conception of free government.

As to the comparative influence of governments on national character, the popular government is the best. A despotism or an oligarchy favours the passive type of character, because it does not oppose them in any way, but is always obedient; while the government of the many favours the "uncontented," aspiring, energetic type, from which all real improvements come. A popular government favours and tends to form such characters, who are neither happy under a despotism nor desired by the despot. It is a great mistake to suppose, as many do, that contentment, which is sometimes a virtue, is to be found with the passive type and under despotic governments; far more likely there is intense envy at the success of the self-helpers;—while even contentment itself is not a virtue, unless it be contentment with material fortune as a necessary condition to its possessors in order to strive after higher things, or to improve circumstances with which they are not contented. In this way freedom invigorates the character. Still more im-

[1] *Representative Government*, chap. iii. p. 57.

[2] From which it may be doubted if the prosperity of England was due to her freedom chiefly.

portant is the discipline of character which comes from the discharge of some social, some public function, such as sitting on a jury, or taking a share, however limited, in local government. Doing something for the public takes a man out of his own narrow life of routine and selfishness, while "if the amount of public duty assigned him be considerable, it makes him an educated man." Even more beneficial is the moral part of the instruction afforded by the participation of the private citizen, if even rarely, in public functions. "He is called upon, while so engaged, to weigh interests not his own; to be guided, in case of conflicting claims, by another rule than his private partialities; to apply at every turn principles and maxims which have for their reason of existence the common good; and he usually finds associated with him in the same work minds more familiarised than his own with these ideas and operations, whose study it will be to supply reasons to his understanding and stimulation to his feeling for the general interest. He is made to feel himself one of the public, and whatever is for their benefit to be for his benefit. Where this school of public spirit does not exist, scarcely any sense is entertained that private persons, in no eminent social situation, owe any duties to society, except to obey the laws and submit to the government. There is no unselfish sentiment of identification with the public; every thought and feeling, either of interest or of duty, is absorbed in the individual and in the family. The man never thinks of any collective interest, of any object to be pursued jointly with others, but only in competition with them, and in some measure at their expense; a neighbour, not being an ally or an associate, since he is never engaged in any common undertaking for joint benefit, is therefore only a rival. Thus even private morality suffers, while public is actually extinct. Were this the universal and only possible state of things, the utmost aspirations of the lawgiver or the moralist could only stretch to making the bulk of the community a flock of sheep innocently nibbling the grass side by side."[1]

Hence it follows that a free government is the best government, and the more of it, the more who enjoy its benefits, the

[1] *Representative Government*, chap. iii. p. 68.

better. But as it is impossible that all the people of a country or even all the people of a large city should directly participate in it, it follows that a smaller number must be selected to represent the rest. Hence the government must be representative.

§ 4

Such is his proof that a popular government is the ideally best form of government for advanced races—a proof which consists chiefly in appeals to history and to principles of human nature to show that despotism lowers the character, and that free government raises and expands it, while it is at the same time more favourable to general prosperity and the interests of the greater number.

The latter is probably true, but that it tends to develop a higher type of character is a more doubtful matter. To take our own history. Is it certain that the average Englishman in the time of the Tudors, when the government was nearest to personal rule or to a despotism, was of an inferior type to the average voter of to-day? Was he not as sturdy and high-spirited? If he let King Henry VIII. rule him rather despotically, it was because he wished to be so ruled; it was with his own will and consent that he was so governed by the able and energetic and strong-willed and high-spirited prince, whom he further regarded as his protector against oppressive landowners who turned arable lands into pastures, as well as his defender, along with his own good arms, against the French or the Scots. The Lancashire man had the martial virtues needed to stand firm at Flodden, and the Devonshire man, in Elizabeth's reign, had the daring needed to "singe the beard of the King of Spain," the most potent prince in Christendom, at the Armada and afterwards. And did not the Englishman show his spirit even against the redoubtable Henry VIII. himself when the latter taxed him too heavily, or interfered with his religion, by rising in insurrection, which was the old way of showing that the will of the people had got out of focus or coincidence with the will of the king? The average man was probably a bolder, braver, more energetic character in the sixteenth cen-

tury than the man of to-day, because every man was then a potential soldier. He was more patriotic, because he was often called upon to fight for his country, if not to give his vote. He was as good a father, husband, and neighbour; he had quite as much public spirit, even without sharing the limited franchise of the time.

All this applies to Englishmen in the times of the Tudors, when our government was nearest to a monarchy or to a despotic rule. And on Mill's principles the time of degeneration and decline should have set in. The despotism should have enfeebled the spirit, made men distrustful of themselves, wanting in the self-helping virtues. It should, but it did not. On the contrary, never did they show so high and great a heart as in the fifty years after the Tudor dynasty had passed away.

The whole seventeenth century is one long proof of the great spirit of the English people, which on Mill's principles must have been either produced or nursed or highly favoured by the century of Tudor despotism; and consequently such a partial absolutism favours high national character. There was a whole century of struggle with the Crown, in which the people were divided, some for the divine right of the monarch, some for the powers and privileges of the Parliament. The nation conquered their king and then grew sorry for it, and finally in a tempest of loyalty called back his son, and allowed him to rule as he pleased, provided he respected their religion, their dearest interest; and the Stuarts might have long ruled if they had only been wise enough to let their subjects' religion alone.

The point is, there was no popular government in Mill's sense, and yet Englishmen never showed to greater advantage than all throughout that great seventeenth century; and on Mill's principles their high national character must have been formed, not under free institutions, but almost under despotism. But the truth is that national character is a unique thing, the conjoint result of original difference of race, of geographical situation, of the influences of a thousand years of history, including particularly the influence of war and of religion. It is not quickly changed, or changed in one generation, as Mill thinks,

where he speaks of the Roman spirit being so changed under the mild despotism of Augustus that they had no spirit to rise against Tiberius. It is most certain, from the fact of heredity alone, that a type of character so remarkable as that of the Roman, and the product of a thousand years of law and war and religion, could not possibly have changed fundamentally in a generation. These quick degenerations happily are not possible, and Mill totally miscalculates the effects of governments of all kinds upon national character, which is a stubborn, massive thing, only very slowly changeable.

Only a new religion has power to modify it within a few years, or some mighty convulsion like the French Revolution, which shook a whole generation of Frenchmen and Frenchwomen, the effects of which went to the inmost physiological fibre, affected brain and nerves, and, through heredity, affected their children, and made almost a change of type and temperament in the French people,[1] which they have retained ever since, the result of heredity being supported by a new moral atmosphere. Short of such agencies as these two, a national type of character does not easily or quickly change.

It is a mistake analogous to that made in his *Political Economy*, where he supposes that the present industrial system of employer and employed could be quickly changed into universal co-operative production, not seeing or allowing for the vast strength and slow growth and wide and deep roots of an established system at once industrial, social, and legal; always in a hurry for quick results, under his new delusion the average unit, the working man, was to be wonderfully elevated by the simple means of voting, taking part in political discussions or in petty local government. This was the one sole way in which he was to be educated. But is it not clear that men labouring all day and tired in the evening have little time or taste for politics; that only those can attend to it whose time is unoccupied, that is, unemployed labourers, loafers, and men who dislike labour, tap-room orators, and the lower rank and file of professional politicians—types who are by no means

[1] See on this point Quinet's interesting *History of the French Revolution*, vol. iii.

ideal products of the ideal form of government? There is nothing lofty or elevating in the lower walks of practical politics, and it does not promise much in the way of general education to the electors. Probably, so far as popular government is at all a means of education, it will come from the teaching of the leading politicians on certain occasions, or the perusal of their speeches in the newspaper, or the instruction of educated persons in their neighbourhood, or perhaps of their weekly newspaper.

The men of light and leading can educate the electorate to some extent by directly addressing them, that is, they can give them light on political questions. And it is most important that they should do so in order to counteract the effect of the teaching of professional agitators and demagogues, the flatterers of the Demos. On the elementary principles of politics and on important political and social questions they can address their intelligence, and, if pains be taken, they can enlighten it a little. At present they aim too much at the man of average education, while they should aim much lower. No doubt it is more easy for an educated man to address an educated than a comparatively uneducated audience; but the importance of the matter makes it well worth our politician making the attempt to descend to their level, and not to speak over the heads of the labouring classes. Politicians can do a little for their political education in this way, but little or nothing for their moral teaching, except now and then when they are called to distribute school prizes and address the young. Moral education is for the clergy, the schoolmaster, the parents of the young, and for a man's own self when arrived at years of discretion. The discipline of life, the struggle for existence, educate him morally or immorally as it happens; so that finally, in spite of all Mill's talk about the elevating and moralising tendency of taking part in political or public functions, I do not expect that much good will come from that quarter.

§ 5

Even according to Mill himself, representation is only the best government under the three conditions before specified.

The people must be willing to accept it, willing, if necessary, to go out and fight for it, willing to do what it asks of them to fulfil its promises. It is only suitable for advanced races, and even if an advanced race like the French are willing to lay their liberties at the feet of a dictator, and allow and invite him to be an absolute ruler, they are not fit for liberty; it is not the proper government for such a people; the truth being that France alternately admires both a Dictator and The Republic, and, finding ills in both, gets desirous of a change, which, as Hobbes has explained to us, is rather a general weakness of nations.

It comes to this finally with Mill that representative government is only fully suited to the Anglo-Saxon race, the Swiss, and perhaps to the people of Belgium, Holland, and Italy. It is not suited for a nation of place-hunters like the Greeks, in whose case it merely serves to quarter on the country a number of pensioners, to the increase of the usual expenses of the State. It is not suited for the South American States in a state of chronic revolution and "pronunciamientos," still less for Russia, Turkey, China, India. It is only the best government for a very few countries. Even with them, unless minorities can be specially represented, contrary to the principle of democracy, as understood by Hobbes, Locke, Rousseau, Bentham, and even Burke, who foresaw and feared the danger of tyranny from democratic majorities, it is a bad government, and may be the worst of all. These are large qualifications of the merits of representative government. Let us examine them more closely; but first let us consider the proper functions of the representative bodies.

§ 6

"The meaning of representative government is that the whole people, or some numerous portion of them, exercise, through deputies periodically elected by themselves, the ultimate controlling power, which in every constitution must reside somewhere. This ultimate power they must possess in all its completeness. They must be masters,

whenever they please, of all the operations of the government."[1]

This is true. The people under it are in the last resort sovereign. All the attributes of sovereignty are vested in them, not in king or Parliament. But they, from the nature of things, can only exercise their powers through agents or representatives, and their only direct act of sovereignty is the choice of these agents, and it may be the pressing on him of special instructions (the exacting from him of pledges). The people, being too numerous, cannot directly make laws; they cannot administer public business, except under municipal or local government; they cannot administer justice (save in the subordinate position of jurymen), but they can appoint the representatives, who appoint the Prime Minister, who chooses his subordinate ministers and appoints the judges.

And what are the proper functions of the representative body? The answer depends on what kinds of business a numerous body of nearly seven hundred persons is competent to perform properly. "That alone which it can do well it ought to take personally upon itself." With regard to the rest, its proper course is not to do it, but to take means for having it well done by others.

It is thought, for example, to be its duty to vote the taxes. Yet it does not do so, it merely gives its consent or refusal to items of taxation or expenditure proposed by the Chancellor of the Exchequer. The principle here involved affords a clue to the limitations and definitions of the functions of representative assemblies. Being numerous, they are unfit to administer. No body of men, unless under the command or direction of one, is fit for action. This is so even in the case of a business board. But a body is qualified for deliberation and discussion where a conflict of views prevails, as there does so constantly on political questions.

A popular assembly is unfit to administer, or even to dictate in detail to those who have the charge of administration, because every branch of the public administration or service is skilled business with peculiar principles and traditional rules

[1] *Representative Government*, p. 86.

requiring special knowledge, "which does not come by intuition," but experience. If an assembly interferes it is a case of inexperience sitting in judgment on experience, ignorance on knowledge; so it would be even if no interested or sinister motive were present, but if otherwise there may be the grossest jobbery, worse than the worst corruption which could take place in a public office.

The business of the assembly is not to decide matters of administration by its own vote, but to "take care that the persons who have to decide them are the proper persons." But they should never nominate the individuals, because they never regard special qualifications. It is not desirable even that they should nominate the members of a Cabinet; they only at present virtually decide who shall be Prime Minister, or "who shall be the two or three individuals from whom he shall be chosen"; the other ministers being chosen by the chief, while every minister appoints fit persons to offices in his department which are not permanent.

An assembly should not interfere in administration, though it tends to do so more and more. But, further, such an assembly, sometimes called legislative, is not even fitted for legislation, because law-making is a highly difficult business, requiring a trained mind and long study. This consideration would limit the work to a select few. Besides, every provision in any law should be made with reference to all the rest, and the whole of any single law should harmonise with the previously existing laws. These conditions cannot be fulfilled when laws are voted clause by clause. In legislation, no less than in administration, the proper work for an assembly is not to attempt to do the work for which they are themselves unfit, but to see that fit persons are put to do it. What is required in a civilised State is a small and select body, a commission of legislators, whose business should be to make the laws under the sanction and wish of the Parliament. This work might be done through the machinery of the Law Lords.

There remains, then, as the proper office for a representative body, to watch and control and criticise the government, to discuss all subjects of public interest, and to indicate popular wants.

Thus then, finally, the proper business of the House of Commons is control, criticism, discussion, not administration, nor legislation. Parliament is properly, as Carlyle called it, the Grand National Palaver. In Mill's view not only have the people no direct share in the government, but neither should their deputies have any, unless the few of them who happen to be in the Cabinet. They have no true claim to make laws, from their ignorance of this most highly difficult work requiring lawyers versed in the actual law, above special and sectional interests, and even philosophic lawyers able to estimate the probable effect of a new law. Of course this relieving of members of their old functions would greatly obviate some of the objections of Hobbes against government by a body of orators. But, then, the resulting government could scarcely be truly called Popular Government, when neither the people nor the body of their deputies directly govern. It would be rule by an aristocracy of talent. The real rulers would be the bureaucracy, the professional governors. It would only be popular government at three removes, at each of which its power dwindles, and finally it amounts to no more than the election of the Prime Minister, the real king.

§ 7

Unless indeed the sovereign people should determine to assert and use directly in legislation its sleeping powers. And this it can do, if only the majority are generally agreed to do so. They could change the constitution; they could even change the civil law, because they could refuse to vote for anyone who would not promise to support their policy; and if some men were too conscientious to represent them on these terms they could find others who would.

Thus the majority of voters being working men, comparatively poor, Mill thinks it very likely that when they have the power, as they now have it, they may press for class legislation as regards what they take to be their interests. Allow them to be sufficiently intelligent to "be aware that it is not for their advantage to weaken the security of property, and that it

would be weakened by any act of arbitrary spoliation"; yet short of this he thinks they might throw an unfair share or even the whole of the burden of taxation on the larger incomes and on "realised property," and having done so "add to the amount without scruple, expending the proceeds in modes supposed to conduce to the profit and advantage of the labouring class."

It is no answer, he thinks, to say that these things are not for the *real* interests of the most numerous class. If monarchy or aristocracy only followed their real interests they would not be such bad governments. They followed what they thought to be their interest, and the labouring class may be expected to do the same, namely, to pursue not their real ultimate interest but "their immediate and apparent interest." And no one can doubt, he thinks, that the pernicious measures above enumerated, and many others as bad, would be for the immediate interest of the general body of unskilled labourers.

Some of the things that Mill mentions are very likely to be urged by labourers, and indeed more extreme proposals have been included in the resolutions of Trades Union Congresses. To place increased taxation on the rich is a very natural proposal, and in fact Parliament has thrown more taxes on the wealthy, both by raising the income tax and the death duties, though not for the purpose of specially benefiting labourers. But it is not easy to believe that the majority of the working classes would think that an indefinite increase of such taxation, not easy to distinguish from spoliation, could be spent on them in beneficial ways, whether in giving employment to labour or otherwise.

Let us suppose, however, that a government controlled by labourers decided not merely to tax inheritance as it now does, but to tax it 100 per cent., to take all that a man leaves at his death as the readiest means of checking inequality, and to benefit labourers. What would be the result? One would be that what he would have bequeathed after death to his children (or others) he will give to them during life, so that unless the State can prevent gifts during lifetime there would be nothing for the government to take at death. But if a man

cannot give to whomsoever he please, including especially his children, he will have small inducement to save and labour. Now, the power of gift is essential to the idea of property; it might appear, therefore, that the only effect of abolishing inheritance would be to promote gifts during life and to stimulate luxurious consumption. The family would still possess all the property of the parents, and would pass it on in like manner during life.

To avoid this nugatory result we must suppose the government to take during life, at the fountain, the wealth that otherwise would escape by evasion. To effect its object of promoting equality, it would have to put on a heavy progressive income tax. What would be the result? It would depend on the amount, the percentage of the tax. Suppose, as some Socialists recommend, that all beyond a moderate income, say of £500 a year, should be taken by the government, the immediate result would be slackened energy, diminished saving, dismissed workmen, and increased luxurious expenditure for a time. The government would have armies of disbanded labourers to set to work, increasing more and more. But in the taxes it has the means of employing such labourers. If it competes with private enterprise, it would be beaten; it would therefore have to suppress the old system. It would have to reorganise industry and get managers and officials to direct the work. The reign of socialism would have come. And now is the State to pay all alike, managers and men, skilled and unskilled? There needs no prophet to see the issue: equality in poverty, in misery, and in slavery; languor, listlessness,—an intolerable state by comparison with the past reign of hope and heart and luxury and splendour. The equality, if tried, would very speedily be changed.

Unequal salaries, liberal enough to encourage managers used to a higher standard, and graded so as to draw out the energies of the superior and more efficient labourers, would have to be given. The rights of property would have to be allowed, including the right to give to another; that is to say, we should have a partial reversion to the old system, which would be more and more complete, and which the labouring classes would be the first to demand, from the poverty of their condition, as

compared with what it was a short time before. (One short twelve months of the reign of equality would throw a great illumination on many things, and would cure for the rest of the life of our species all desire for a return to it.) Our present system of private enterprise, private property, and free contracts is the result of a long evolution; and any attempt at a fundamental change in the socialist direction, especially one beginning with the confiscation of property under the name of taxation, is fraught with peril. The State may take a part, both of incomes and inheritances, for general State purposes and the weal of the State. What it now takes is not excessive, as it does not prevent the general increase of wealth. It would be much otherwise if it considerably increased its demands, especially under the plea of benefiting labourers.

As to legislative attempts to raise wages, which Mill speaks of: these are likely to be made, and labourers have as good a right to try them as masters had formerly to lower wages by law. The chief objection to them is that they would defeat their own end. To fix a minimum wage can be done by law, but it would result in throwing numbers out of work—a cruel kindness—unless the government then employed them itself; and this, we have seen, is the beginning of the road that leads to socialism. To lessen by law the hours of labour per day would have an injurious effect, that is, it would reduce wages in a corresponding proportion, and would not increase the demand for unemployed labourers. As to "hostility to machinery," the working classes have got beyond that, though it is quite likely a few would like "protection" where their own trade was hard pressed by competition. But the generality would not, because they do not require protection for their particular trade. On the whole, we must trust to the common-sense of the labouring classes, and their perception of their own interest, if not their sense of justice, to keep them from Bentham's "sinister interest"; and if we are to judge by the small number that support extreme socialistic or labour candidates at general elections, our confidence in their common-sense and perception of their true interest would appear so far to be justified. Certain it is were it otherwise, that neither

Mill's particular scheme for representing minorities nor plural votes would be an adequate safeguard.

If the labouring classes only ask what is just and reasonable and for their own real benefit, they will get representatives from the class above them to advocate, to press, and to carry them. But they must not press for what is contrary to all other interests, and especially their own; the only effect of which would be, even if successful for a moment, the prevention of what they may otherwise fairly hope to get under the representative system, and the overthrow of the system itself as well as their political liberties.

Let the Demos put away evil counsellors, blind or self-seeking teachers, and seek out its true leaders, able and honest men, who will assert their fair claims and legitimate interests, or else good employers in whom they have confidence. The latter are their "natural leaders" in an industrial régime, as the feudal lords were formerly, and the best thing for the labouring class is to come to a fair understanding with them.

A fair wage, a just share, is due to the worker. Interest on capital and employer's or manager's wage is due on the other side. This secured, the rest is for the labourers, and in general fully that amount is transferred to them, if we remember how many enterprises fail, how many employers make no profits. Where profits in an entire trade are above the ordinary rate the labourers deserve a share, and competition tends to give it to them, though Trades Union pressure or a strike might give it sooner. On the other hand, if the unusual profits are due to superior methods of production, whether through the employer's possession of a patent, greater capital, superior business ability, or other differential advantages, the extra profits as clearly belong to the employers. But the terms of employment should be a matter of agreement between them, and not of legislation, that is, in the long-run of force.

§ 8

A few words must suffice as to Mill's safeguards against the danger of class legislation by the labourers acting together, and

one or two other points of his political doctrine. He does not think government by a majority just or even reconcilable with the idea of an equal democracy, unless minorities are represented, as in some such scheme as Mr. Hare's, which he praises as "one of the very greatest improvements yet made in the theory and practice of governments."[1] The proper check on the government of the majority is the instructed minority. This minority, which should have representatives proportioned to its numbers, no matter how scattered, would naturally in Mr. Hare's scheme look out for the most competent persons in the kingdom to represent them, so that they might make up for the smallness of their number by the superiority of their arguments. To this safeguard he would join another, by giving more votes than one to persons of superior intelligence, which might be presumed from their having passed certain examinations, or being active members of the liberal professions. He would even as a "temporary makeshift" give more than one vote to the owners of wealth; otherwise, if education does not get the degree of influence that is naturally due to it, the benefits of universal suffrage would be outweighed by the evils attending it; so that, in fact, he has come round to the opinions of Burke, who denied the right of "a mere majority told by the head" to govern a country, because the smaller number might have the greater force as well as all the reason on its side.[2] And he has abandoned the view of Bentham, "That everybody should count for one and nobody for more than one" in the choice of representatives.

As to these last, while he is in favour of widening the choice of candidates and abandoning all property qualifications, he denounces in the strongest terms the proposal to pay members of Parliament a salary for their services (save in the Colonies, where few could afford to render gratuitous service). By the payment of members, "the calling of the demagogue would be formally inaugurated." He proceeds in language as strong as Burke's denunciations of the members of the National Assembly, and conceived in essentially the same vein, to say:

[1] *Representative Government*, chap. vii. p. 143.
[2] *Supra*, p. 146.

"The business of a member of Parliament would therefore become an occupation in itself; carried on, like other professions, with a view chiefly to its pecuniary returns, and under the demoralising influences of an occupation essentially precarious. It would become an object of desire to adventurers of a low class; and 658 persons in possession, with ten or twenty in expectancy, would be incessantly bidding to attract or to retain the suffrages of the electors, by promising all things, honest or dishonest, possible or impossible, and rivalling each other in pandering to the meanest feelings and most ignorant prejudices of the vulgarest part of the crowd. . . . Such an institution would be a perpetual blister applied to the most peccant parts of human nature. It amounts to offering 658 prizes for the most successful flatterer, the most adroit misleader of a body of his fellow-countrymen. Under no despotism has there been such an organised system of tillage for raising a rich crop of vicious courtiership."[1]

Such are the words used by one who was considered an advanced Radical. There is no doubt they contain substantially sound doctrine, which it would be well for our Liberal statesmen, when they are next in office, to duly weigh before they take a step irrevocable, and fraught with peril, to which they are not yet finally committed, though prominent members of the Liberal party have coquetted with the proposal.

But, even if all members were paid, I am inclined to think that the great majority of electors would prefer the comparatively rich man, to whom a salary was a matter of indifference, to the professional politician. They would do so from their native good sense, their sense of the fitness of things, their traditional feelings, not to say prejudices; so that perhaps the chief result would be an increase in the number of Labour or extreme Radical members, but not an increase in the Liberal party; a more certain result would be the return in subtler forms of the corruption of a century ago, both because men dependent on a modest salary would be peculiarly exposed to temptation, and the necessities of the situation would ensure its being tried on them in some shape.

[1] P. 218.

He is on much more disputable ground, when, following Bentham, he advocates woman suffrage, but more unhesitatingly and more enthusiastically than Bentham. He differs from him in thinking that the open is preferable to the secret vote, because the evils against which the ballot was intended as a protection, namely, intimidation of voters, whether of tenants by landlords, of employees by employers, or of tradesmen by customers, no longer exists, and it is more likely that the vote will be given in the public interest if it is openly given. He also differs from Bentham and the Chartists as to the proper duration of Parliaments. The time should be long enough to enable the representative to show his "intellectual, moral, and active qualities," for which a year is not sufficient; on the other hand, it should not be so long as to make him forget his responsibility to his constituents, to take his duties too easily, or make his position a mere means of promoting his own advancement. Perhaps, on the whole, in England, considering that democracy has rapidly become the strongest political power, "less than five years would hardly be sufficient to prevent timid subserviency." As to exacting from candidates pledges, on the whole, he is against it, though in some cases it may be necessary. Especially he is opposed to it in the absence of the representation of minorities or plural voting; for then the unfettered discretion of a man chosen for his ability, which he thinks would often happen, and should be always aimed at, would afford the "only escape from class legislation in its narrowest and popular ignorance in its most dangerous form." Unhappily without his two specifics, he thinks that they will not be likely to give this necessary free hand to their member —a point with which we have already dealt,[1] and on which we have come to more reassuring conclusion elsewhere. Nor will the existence of a Second Chamber be any effective check; though, otherwise regarded, he is in favour of one resembling our own, but duly reformed by an infusion of life peers.[2]

[1] *Supra*, pp. 151, 264.

[2] For a full and able discussion of the question of female suffrage and the representation of minorities, see Professor Sidgwick's *Elements of Politics*, chap. xx.

§ 9

It is not necessary, he thinks, to discuss the question of the most appropriate division of public business, as the division is different in different countries, partly owing to the accidents of history. The important point is that the "classification of functionaries should correspond to that of subjects"; and that the whole group of means having one main end should be under one direction, and not divided into separate and independent departments. Where the object aimed at is single, as, for example, to secure an efficient army, the authority appointed to look after it ought to be single also. If the means to the end are placed under different authorities, the end is forgotten and the means become ends themselves.

To ensure the highest degree of responsibility, every executive function, from the highest downwards, should be discharged by a given individual, on whom should fall the blame if he does ill, and the praise if he does well. It may, however, be shared, and that in two ways; in one of which it is only enfeebled, while in the other it is "absolutely destroyed." It is enfeebled when the concurrence of more than one individual is needed previous to acting; for though responsibility is real, so that if anything wrong and carrying legal penalties is done, all are equally liable; yet if the only penalty to be feared is the censure of opinion, men may go to the verge of pecuniary dishonesty and yet feel themselves almost absolved, if those "whose duty it was to resist and remonstrate have failed to do it, still more if they have given a formal assent."

There is here responsibility, but it is weakened; each one has assented and acted. Not so when the act is the act of a mere majority. This is the case of a board sitting with closed doors, where no one ever knows whether a given member approved or not of the act of the corporate body. Responsibility in such a case there is none. Boards, as Bentham said, "are screens." What they do is the act of nobody in particular, at least to the outside public so it appears. They are therefore not fit for executive business, and are only admissible as the less of two

evils, as, for example, where full discretionary power to a single minister would be worse.

On the other hand, "in a multitude of counsellors there is wisdom," and happily it is possible to unite the two principles: to give effective power and full responsibility to one, providing him, if necessary, with advisers, each of whom is only responsible for the opinion he gives.

The head of a State department of the executive government is generally a mere politician. As such he may be an able man, and unless such as he are generally so, the government is bad. But even if he be a man of ability, with a general knowledge of the larger interests of the country, still he cannot possess, unless by accident, what may be called professional knowledge of the department over which he presides. In this case skilled advisers are necessary; but sometimes, where experience and knowledge are the chief considerations, one professional adviser, in addition to a staff of qualified clerks, is enough. More frequently, however, he should consult more than one. Especially is this necessary in the case of the Minister of War or of Naval Affairs. In these two departments, at least, the minister should be assisted by a council of "able and experienced professional men." Such men ought to hold their positions notwithstanding changes in the administration; but, in order to secure the most competent, they should only retain office for a fixed term, unless reappointed. Jobbery would be prevented by such temporary tenure, which would also allow of the selection of younger and abler men, not to be had if the offices were for life.

These councils should be consultative merely, that is, the final decision in every case should be the act of the minister. Still, though members merely advise, they should not be regarded by a resolute minister as ciphers, nor should they regard themselves as ciphers. They should be expected to give an opinion, and the minister to hear it, whether he adopts it or not. The proper relation between the chief and his advisers is accurately hit by the constitution of the Council of the Governor-General and those of the different Presidencies in India, in which the councils are composed of men with

professional knowledge of Indian affairs, usually lacking to the Governor-General and Governors, and which it would not be desirable to require of them.

"A most important principle of good government in a popular constitution is, that no executive functionaries should be appointed by popular election, neither by the votes of the people themselves, nor by those of their representatives." And the reason is that the entire business of government is skilled employment; the necessary qualification for the work cannot be judged of except by those who have like qualifications or practical experience of them. To find the fittest is very "laborious, and requires a delicate as well as highly conscientious discernment"; the work is very badly done at present, and it is most necessary to impose as far as possible the responsibility of making the best selection on high functionaries in the several departments. Consequently, all subordinate public officers, except those selected by public competition, should be appointed on the direct responsibility of the minister under whom they serve when chosen. He who appoints should be the sole person allowed to remove subordinates, but for the greater part they should only be removable for misconduct; for without a permanent tenure, if liable to dismissal for no fault, it would be impossible to secure a highly-skilled public service.

The ministers should be chosen by the Prime Minister, and he himself, though really chosen by Parliament, should, in a government like ours, be officially appointed by the Crown.

In the American constitution the President, the head of the executive, is chosen by popular suffrage; but it is not a good rule for a Republic, since it results in the exclusion of the ablest men (who probably have made enemies) and the selection of an unknown man, or one distinguished in some field other than politics. With us the head of the executive is dependent on a vote that may be hostile. The rule works well; but perhaps elsewhere, though appointed by Parliament, he might hold office for a fixed period, without regard to the parliamentary vote. In any case he should have the power of dissolving Parliament to prevent a possible dead-lock, in case the President and Assembly should disagree, and neither could get rid

of the other—a dangerous situation, which might result in a *coup d'état* from either side. For a different reason, the executive should have power to summon a new Parliament, because, so long as there is any doubt as to which party has the strongest following in the country, no important improvements, legislative or administrative, will be attempted.

The judges, above all, should not be chosen by popular suffrage, because the people cannot know whether an individual possesses the necessary qualifications. It is of the utmost importance that they should be absolutely impartial. Once appointed, they should not be removable either by the executive or popular vote. In the latter case justice would be perverted. The judges would give decisions that would be most applauded, or were less open to misrepresentation, rather than those that were right and just.

As for the professional public servants, the officials who do not change with each change in the government, they should not be liable to be turned out (as in America) except for positive, proved, and serious misconduct; and they should be appointed at first by competitive examination in the usual branches of a liberal education, the most successful receiving the vacant appointments, as in the case of the Indian Civil Service, but all subsequent promotion should be by a mixed system of seniority and selection by the head of the department according to capacity.

A short chapter on Nationality as connected with Representative Government, another on Federal Representative Government follows, and a longer and more interesting one on the Government of Dependencies by a Free State concludes the work. In none of these is there much that is original, save perhaps in the last in his remarks on the proper government of India, a subject on which he had thought much and on which he here speaks wisely and much to the point.

§ 10

We are not specially concerned with Mill's later works and later crusades; with his strenuous combat with the shadows

in the shape of Sir William Hamilton's *Philosophy of the Conditioned*, in which, amongst other things, he defends Berkeley's denial of matter, and tries to refute Hamilton's theory of The Absolute; nor with his book on the *Subjection of Women*, in which he would deliver them from various disabilities from which the greater number have no wish to be delivered, so much their state of slavery has made them to love their chains; nor even with his "second thoughts" on sociology, after an interval of twenty years, in his *Auguste Comte and Positivism*, though in it he shows a rather clearer conception both of the subject and its appropriate method than is contained in his *Logic*. It is not necessary to consider it here at length, because in substance he merely repeats what he had said before—that Comte has only laid the foundation of sociology, leaving it to others to finish the structure; while he further objects to the Positive Philosophy as a whole that it wrongly omits the science of psychology from its list of the sciences—a science from which Mill expected very considerable things, both as furnishing mental laws to verify historical generalisations and the means of answering metaphysicians like Hamilton and Mansel. He also objects to the positive philosophy that it furnishes no test of proof, such as he attempted to give in his *Logic*.

On the whole, a remarkable man, and a remarkable career: what has been the outcome of it? He did not bury his talent. What has been the fruit? In addition to admirable expositions, some excellent essays as those on Bentham and Coleridge, some smaller treatises of merit, he has given us three ambitious books, influential in their day, and formerly much read at the Universities, but from which the life has already in large measure departed.

What was the cause of his comparative failure? Two things chiefly—one moral, one intellectual, and the former a merit. He was too ardent a believer in progress, moral, political, and social. He looked for more than was possible, and expected it sooner than was possible. He wanted quick results. The other cause was intellectual. He was not original. There was not in him that welling up from within,

from the Infinite, of new ideas, new points of view, which is the mark of the superior, the creative minds, like those of Hobbes, Spinoza, Leibnitz, or Kant. He was well aware of his own limitation in this respect, and in words of great modesty and candour refers to it. He says in his *Autobiography*, p. 176: "I felt that he (Carlyle) was a man of intuition, which I was not; and that, as such, he not only saw many things long before me, which I could only, when they were pointed out to me, hobble after and prove, but that . . . he could see many things which were not visible to me even after they were pointed out."

Here is the explanation of his comparative failure. He had no original intuitions, and no logical acuteness will make up for the want of them; no dialectic skill, no fresh analysis of old materials, whether theories or conceptions, no shaking out of the contents of old propositions by deductive logic, no recombination of them by way of syllogism or ratiocination, will produce what mankind most wants, namely, new truth. A new method of investigation might assist, a new way of approach might surprise truth, just as the experimental method served the moderns for the discovery of truth in physics that had eluded the imperfect methods of the Greek philosophers, otherwise so acute. But Mill had neither originality nor yet a new method, for he never clearly or fully apprehended the scope and range of the historical method, and in consequence he makes but little use of it.

He lacked the one thing needful. In political economy he got his principles from Ricardo and Malthus—principles doubtful as in the case of the law of population, or irrelevant to existing circumstances as in the law of diminishing return from land, or ceasing to be generally true as in the case of assumption of universal competition; and from these principles he draws conclusions affected with the vice of the premises.

In like manner he got his utilitarianism from Bentham, and the improvements on it, not from himself, but from the critics of Bentham's systems. He got his scheme of co-operation from Louis Blanc and Robert Owen; while his imperfect ideas of the historical method, and of the science of society, he owed to Comte.

To be a perfect expositor, a plausible critic, a good controversialist, an acute logician, are good things. They will be always needed. But they are not enough; the great labourers for humanity, the great thinkers, must do more than press out the consequences of other men's ideas. They must give us new and true ideas; new thoughts that it concerns us much to know, a rule of life that will work, that will benefit men in general. They should pass beyond their teachers. Did Mill do so? I doubt it, except in the case of Bentham's moral philosophy, which he improved. New and suggestive lines of inquiry were in the air. He did not fully perceive them. New thoughts were pressing in on many sides. They did not enter into him, however eager he was for new light and anxious to propagate it.

The result of his crusading ardour, combined with his mental limitations, was a series of chimeras, generous no doubt, but which have led to no practical result.[1] He would elevate and make prosperous the working man by one impracticable specific; would deliver him from dependence on capital by another; later on, he would deliver the capitalist and the rich from possible oppression and class legislation by the working man, by plural voting and the representation of minorities; he would emancipate woman from her dependence on man, labour from its dependence on capital, though in both cases the emancipated might well beg to be saved from such deliverers.

He would show men the way to truth—in his *Logic*; then the saving truths themselves in his various works, especially in his *Utilitarianism*, in which he urges impracticable action that would not increase happiness. Later on, we have his theology, such as it is, in his massive volume on Hamilton's *Philosophy*, in which it appears that, though himself undoubtedly a kind of saint and deserving a place in the calendar, he has no real religion.

[1] Except as regards Parliamentary Reform and the settlement of the Irish Land Question, in which cases some of his ideas were adopted in practice.

SIR HENRY MAINE

I. ON ANCIENT LAW AND INSTITUTIONS

§ 1

We have now to present more clearly than Mill has done the newer view of political questions—the view derived from the history of past political societies from their earliest and simplest forms down to their latest and most complex developments, supplemented by a study of contemporary societies in all their various forms, in order that we may thereby better comprehend the present, and may obtain some guidance, some laws of tendency or haply laws of progress that may enable us somewhat to forecast the future. This is the view of the Historical School, which has been more and more felt to be of importance all throughout the century. And we take as the best representative of the school in England the late Sir Henry Maine, whose works have been so widely read by students of political science in our universities.[1]

According to Maine (*Ancient Law*, 1861), the science of jurisprudence was in a very unsatisfactory condition. What stood in place of such a science was a "series of guesses," the guesses of the Roman lawyers, more specifically the theory of natural law.[2] Positive law, it was held by Hobbes, Locke, down to Blackstone, originated in the social compact, but the

[1] The late Professor Seeley is, in some respects, a better example of the successful application of the historical method to politics as distinct from law. But, unfortunately, of the written lectures which he left, only his admirable *Introduction to Political Science* has been as yet given to the public.

[2] *Ancient Law* (1861), chap. v. pp. 114, 115.

main contents as regards property, contract, crimes, and their punishment, etc., were dictated by the law of nature.

Maine admits that the theory of natural law was of great service to the Romans and through them to modern nations in improving their laws. It presented to the former a good model, without tempting them to disobey the actual laws, however imperfect they might appear. But the law was always vaguely and confusedly held; it was differently conceived by different lawyers; and when it was applied to the reformation of government in France at the end of last century, it produced frightful anarchy and disappointment. The theory of natural law, he thinks, cannot be taken as the science of law. Nor can the "analytical jurists," Austin in particular, be said to have given us a science of law. Austin's method is scientific as far as it goes, but it is insufficient. He resolves or analyses every law into a command of the sovereign, which imposes an obligation on some person or persons, to be enforced by a penalty. And he analyses the chief notions, classifies and defines them, thereby securing a clear and consistent terminology, and greatly clearing the brain. But he has left open the very essential question, "as to the motives of societies in imposing those commands on themselves, as to the connection of those commands with each other, and the nature of their dependence on those which preceded them and which they have superseded." Then observe that none of the jurists take any notice of law at any other time than their own. From all which it follows (at the time he wrote) that there was only hypothesis (in the shape of natural law) or mere analysis and classification to do duty for science.

They had all alike started on a wrong road, adopted a wrong method, whether deduction or analysis. The proper method is the historical. We should endeavour to get the origin, the first germs of law as it appeared in the most primitive societies,—then, this clue being obtained, we should try to follow its growth and developments, its changes, whether for better or worse, down to existing times; to assign, if possible, causes for the changes; to do the same as regards each of the grand topics of law,—property (including wills and successions), contract,

crimes, torts. If this were done as regards the main changes, without going into the minute legal history of each country, we should have something like a science of law, at least a scientific history of law from its birth up to the present time, and therefore a true explanation of existing law.

And the same method equally applies to public institutions and powers. In fact, law, in the proper sense, and government begin together. We inquire into the origin of kingship, of aristocracy, of the popular assembly, and the subsequent changes in their general history in each type of society.

In the case of private law, Maine thinks it is above all things necessary to get the first forms of jural conceptions, because "these rudimentary ideas contain potentially all the forms in which law has subsequently exhibited itself."[1] An error here, as we shall presently see, as they do *not* contain all the future evolution, as the germs of a plant or an animal do; but also an important truth. If they always first appear in the same shape, it is important to get them, and interesting, just as to get the first rude faint entrance of religious feeling is important and interesting.

Now, it is natural to suppose that the earliest form of law, supposing there to be only one kind of law, would be found in the earliest and simplest type of society, and this must be critically discovered, and not assumed as it was by Hobbes and Locke. And the earliest form of society, according to Maine, was the patriarchal family, which afterwards expanded here into the tribe and there into the village community, while a union, whether forced or federated, of tribes, or village communities, formed a nation.[2]

The earliest form of law, the germ of later laws, was the patriarchal command, as the earliest form of government was the patriarchal authority. But these are not civil laws, as they apply only to members of the patriarchal group—the wives, children, slaves, and, perhaps, adopted persons. The first appearance of civil laws, laws proper, is in the *Themistes*, the decisions or awards of a patriarchal sovereign or king ruling over a number of patriarchal families.[3] These themistes,

[1] *Ancient Law*, p. 3. [2] *Ibid.* p. 128. [3] *Ibid.* p. 166.

mentioned in Homer, were supposed to be divinely breathed into the mind of the king by Themis, the god whose special business it was to preside over Law. Like decisions repeated in similar cases begat customs, and customs, after letters were discovered, were put into codes, like the Code of Manu, the Decemviral Code or Law of the Twelve Tables of the Romans. These customs thus generated were afterwards developed and extended to supposed parallel cases, and good usages, as with the Hindoos, begat vicious usages, which, when codified, acquired a certain sanctity, which prevented change and improvement. Happily this was not the case with the Roman Code, which was drawn up while customs were healthy and beneficial. When once put into codes, which made them public and cognisable to all who could read, they could not be tampered with, added to or subtracted from, as they would have been when they were only known to a privileged class of lawyers. This was a disadvantage, because a society that progresses requires new laws, new customs. Few societies do progress, and in the great majority the people are content with their laws, and only require a good administration of them. The best legal system with such is that which conforms most closely to its first ground-plan, which never changes in fact. But States that progress require new and better laws. Moral opinion and social needs are apt to be ahead of the laws, and the laws are brought up to the level of advancing morals and social wants by legal fictions, by equity, supplementing law on grounds of higher morality, and finally by legislation, the making of new laws by the supreme power of the State.

By legal fictions the judge really changes the law, changes its scope, while pretending to adhere to the letter. This is exemplified in English case-law, in which the law is really widened in its range by the new decisions. The same was true to a greater extent of Roman law, which permitted the responses of the jurisconsults in hypothetical cases that might very likely arise to be turned into law. In both cases the existing law was extended and improved, usually in the general interest, and therefore the device was good, but only suitable to early times when there was a disinclination in the generality

to openly avowed new law. At a later stage in legal history we have equity as the device for openly correcting the law, by departing from it in cases where it seemed to result in injustice owing to the higher moral ideas of the time. As, however, in time, equity itself becomes hard and rigid and requires a new equity, it is better for the Legislature to effect redress by new laws. Thus, then, legislation is the third source of improved law, and more and more tends to be the sole source of new law.

§ 2

We have here, briefly, Maine's general account of the origin and chief stages in the general history of law, as given in his earliest work, *Ancient Law*. Much of it is true and interesting, but it requires serious corrections. And, first, though it is probably true that the primitive germ of law is the patriarchal command of the father, it is the first form of only one kind of law, namely, legislation. Both are similar in this that they are commands imposing duties, sanctioned by punishments. It is not the first form of customs which are the source of most early laws, and of whose origin a wrong account is here given by Maine, though afterwards largely corrected by him. Secondly, the *themistes* cannot be a development of the patriarchal commands to the household, because the first are supposed to be divinely dictated, but not so the patriarchal commands. There is, in fact, little real resemblance between them, the former being more akin to judicial decisions, which contain indeed an implicit command or law for the future in like cases. But the great mistake is in his account of the origin of custom — the most important question of all. Repetition of *themistes*, in similar recurring cases, he thinks, begets custom, and in simple societies similar circumstances would produce similar cases of disputes or injuries and hence similar decisions, which is anything but an explanation of the origin of custom.

What, then, is the origin of custom? Customs do *not* originate with rulers. They were not the commands of the sovereign. They originate with the many, the common people. In general,

their origin was convenience, utility, just as the habits of animals are in part to be so explained; sometimes they resulted from absolute necessity, sometimes by a rude primitive sense of justice; very many came from religious superstition, many more by the extension of sound customs to supposed parallel cases, by the priestly or lawyer class, after such classes arose much later. Some also, no doubt, in later times, owed their origin to great individual lawgivers, but these rather showed their genius in giving better shape to already prevalent customs, in selecting the best of them, and setting on them the stamp of their approval, and embodying them in consecrated codes. Many of the customs and ceremonies of savage tribes are wholly inexplicable, and seem to us unreasonable and absurd, though in their origin they had a meaning, and were reasonable to the minds of simple primitive men, which rather resembled the minds of grown children. Mere chance, too, as Professor Holland says, originated customs "in the mode in which a path is formed across a common. One man crosses the common in the direction which is suggested either by the purpose he has in view, or by mere accident. If others follow in the same track, which they are likely to do after it has once been trodden, a path is made."[1]

Maine considers that the earliest forms of jural conceptions, if they can be found, will be of inestimable value, because they contain implicitly within them "every form of moral restraint which controls our actions and shapes our conduct at the present moment." He thinks that all subsequent law is latent in these germs, as the future plant and flowers are contained in the seed, or the oak in the acorn. This is far from being true. All future laws are not developments of the primitive jural germs, even if we had the germs before us without doubt. Whether the primitive germs be the patriarchal commands, or the *themistes* of Homer, customs are not developed from them, and custom is a form of restraint earlier than the latter, as early as the former. Even if custom be the primitive germ of law, there is much law derived neither from custom, nor *themistes*, nor patriarchal command. Religion is a distinct

[1] Holland's *Jurisprudence*, chap. v.

source of law, I do not mean superstitious customs having origin with the people, but, *e.g.*, much of Mohammedan law and institutions is contained in the Koran, partly founded on older Arab custom, but also on important innovations and direct precepts of the Prophet Mohammed, originating in his own political genius. Some of it is contained in interpretations of Mohammedan doctors (the Ulemas) of the same nature as the English case-law and the Roman *Responsa Prudentium*, because new social exigencies have demanded additional law that could only be got in this way, the Koran being by a legal fiction the sole and sufficient source of all. The like is true of the Code of Manu. Old customs form the core of it. But whether one or many made the code, new precepts and laws were inserted and became consecrated in it; and the Brahminical lawyers have since added to it, under colour of interpreting it.[1] In the same way Christianity, especially through the influence of the canon lawyers, is the origin of those important parts of law in all European systems which relate to marriage and divorce, the legal position of unmarried women, wives, and widows, as regards property. Even philosophical and moral theories, such as Stoicism, through the theory of natural law which flowed from it, and during the past sixty years Benthamism, have been new and separate sources of law. Much of all this is indeed elsewhere laid down by Maine himself, which makes it all the more difficult to believe that there is only one root for law, or that the early jural germs contain in them potentially all later law.

§ 3

Let us now take up the two main topics of law—property and contract—to see how he deals with them by the historical

[1] "The 'roots' (of law) enumerated in the Institutes of Manu are four: Revelation, or the uttered thoughts of inspired seers; the institutes of revered sages handed down by word of mouth from generation to generation; the approved and immemorial usages of the people; and that which satisfies our sense of equity, and is acceptable to reason."—Holland's *Jurisprudence*, chap. v. This, though old, is nearly as full and true an account as Maine's of the sources of law.

method; for here, if anywhere, light might be expected to be thrown by it. We might through its researches hope to learn more of the real nature of these two essential elements of our existing society, to find their beginnings, to discover their main changes, and finally to gather their tendency as respects the future.

He follows his usual plan: tries to ascertain the first form of property, of contracts, of testaments, then tries to trace the subsequent changes and their causes. But as the earliest form of property, like the earliest form of law itself, depends on the earliest form of social aggregation or of independent self-contained groups, a preliminary question arises: What was the earliest form of society itself? and then, What were the subsequent social series? because law depends on the social type or organisation, comes from it, and changes with it, whether primitive, Jewish, Roman, feudal, or modern.

The fact is, on this question Maine gives two quite different and wholly inconsistent accounts. The patriarchal family as described in the Book of Genesis is his first conception of the primitive social organism; later on, it is the Roman family under the *patria potestas*, which he thinks was originally universal, but which had decayed except in the Roman world. The patriarchal group is identified with the Roman family, is the first political society, and the command of the patriarch the first form of law.

By this assimilation of the patriarchal family to the Roman family under the *patria potestas* he is enabled to make use of certain chapters of Roman law, in particular the history of the successive reductions in the *potestas* over both the person and acquisitions of the children of the *paterfamilias* made during several hundred years down to the time of Justinian; but his proof of its identity with the patriarchal family, as described in Genesis, is very defective, while that of the former universality of the *patria potestas* is still more so.[1]

But again, Maine vacillates between this conception of early

[1] In fact, his argument amounts to this: We cannot directly prove its universality, but we can prove the universality of something else, which

society as made up of family groups on the Roman model, and a quite different view in which the social unit is rather the tribe or clan ruled by customs, but directed by a chief; a group, at first communistic as to property, in which of course the *patria potestas* could have no significance as to property, because in fact until much later there was none. The views are far from clear, and the two are certainly inconsistent, one being taken from the Roman law and the other from quite different sources. Add that in the village community, ruled by a council of elders or headmen, we have another social group or organism different from the clan, like the Highland or Irish. In chapter viii., treating of the origin of property, he gives us the social types which, on his own showing, must represent earlier stages of social aggregation. For property was originally held in common by the tribe, it gradually became individual, was divided amongst the separate households, that is, families, which must accordingly have been, not the earliest but a later social type. Which was really first, the tribe or horde of kinsmen, or the single family, the pair with children, is a difficult question, because every aggregation of kinsmen can be traced logically to a single pair. But let us postulate as a fact what is probably true, that there was at one time generally tribes with property in common; and we know that private property in both land and goods was reached: the question is, In what way? What were the causes and what the stages of the process? And we have now to see how Maine deals with this question.

§ 4

However the tribe came into being,[1] the property belonged to it collectively, especially the land, and private property came

was a product of it, "a mould" left by it, namely, agnatic relationship. But it does not follow that where we find the latter the former must have preceded it, as is well shown in M'Lennan's *Patriarchal Family*; and it appears there was an earlier stage where relationship was only recognised through the mother.

[1] It would appear to be an expansion of the family, the single pair; see *Ancient Law*, chap. v. p. 128.

from "the gradual disentanglement of the separate rights of individuals from the blended rights of a community." This is sufficiently abstract; and he proceeds to give four examples of the stages of transition—the Highland clan, and the Slav, the Hindoo, and the Russian village community. In the *Early History of Institutions* he gives a fuller and better account of the origin of landed property. In reality he gives two origins: one the same as that just stated but more clear, the second a new one, namely, ownership by the Chief, because the Chief from the first had a separate portion of land assigned to him, as well as, we may presume, the choicest things of other kinds—the best horses, later on the finest swords and armour, the choicest raiment and woven fabrics, etc. Here was one beginning of private property in land, and this precedent was copied in subordinate cases; some land being assigned as the "appanage of office." The rest remained the common property of the tribe, or in other cases of the village community.

The land itself was the natural "solvent of this natural communism." It was divided into equal portions, and the possession assigned to separate households; the portions were changed by rotation to secure greater equality, or it was periodically redivided. But each one had the produce of his own labour for the year, or until the next redivision. But by degrees, Maine tells us, "as the common ancestry fades away from indistinctness, and the community gets to consider itself less an assembly of blood relations than a body of co-villagers, each household clings with increasing tenacity to the allotment which it has once obtained, and redivisions of the land among the whole community, whether at fixed periods or at death, become rarer and rarer, and at last cease altogether, or survive only as a tradition."[1]

And thus we come to private property in the cultivated tribe-land which was originally held in common. But the heath and waste still remained common. The process of transition, he thinks, must have been slow, because in some places the old system still exists. It was due to, or in some cases hastened by, pressure of population.

[1] *Early History of Institutions*, p. 189.

There are several stages in the transition from the primitive communal to private ownership, and all these successive stages can be still seen simultaneously existing, because the social world is full of "survivals," owing to the obstinate conservatism of custom, especially in rural and agricultural communities. Thus we have still the house communities of the Southern Slavs on the frontiers of Austro-Hungary, in Servia, in Bosnia and Herzegovina; the Hindoo joint family and the Russian village community, each of which groups holds property less and less of a communal character; till finally in the Hindoo village community there is now scarce any traces of the original collective property. The increase of population in India led to the introduction of outsiders, which was not the case in the Russian village, which still preserves in the *Mir* much of its original features. Still the tendency in all cases is, even in the house communities, as de Laveleye tells us, to individual instead of collective property. The attraction of the large towns for the more energetic and individualistic members tends to break up the house communities.

In early times the tribal land was inalienable; nothing short of conquest could transfer it to others. Even then the land was not usually taken from the tillers, but only a tribute or rent was exacted by the conquerors, and servile communities were not unknown. The same was true of the portion of the sub-tribe or sept. The land could not be alienated, except in cases of "extreme necessity," and even then the consent of all was necessary. Even when landed property became all but private property, it was difficult to alienate it.[1] And the history of property, according to Maine, consists largely of successful attempts made to overcome the difficulties placed in the way of easy transfer.

One device was to classify property into higher and lower kinds (like the Roman Res Mancipi, Res Nec Mancipi, English real and personal property); and to allow the latter to be conveyed with less legal formality; then the advantages of the simpler conveyance becoming apparent by degrees, the sim-

[1] Of this the Jewish institution of Jubilee, by which in the fiftieth year land reverted to its former owner or his family, is an example.

plicity is communicated to the higher kind. Thus the tendency in England is to assimilate the conveyance of land to the more easy and simple transfer of personal property. A second device was to distinguish property into classes according to its source, and to permit greater freedom of alienation of one than the other. Thus within the ancient Hindoo family the father could alienate what he had specially acquired, but not the remainder of the family property; in Roman law the son's private acquisitions (*e.g.* the soldiers' booty) might be disposed of as he pleased, *inter vivos* or by will, but what was made through the father's capital belonged to the father.

Another most important device by which property might become separated from its original owner, whether individual or tribe, was "usucapio," the prescription of the moderns, a device of the Romans, but copied, after much opposition from the canon lawyers, into all legal systems; the essence of which is that possession undisturbed for a certain length of time, varying with the kind of property, purifies and confirms the title of the possessor as against the original owner, provided his possession began *bonâ fide*, and his title was acquired in some one of the legally recognised modes. Thus possession of land for two years and of moveables for one year transferred ownership from the original owner to the possessor. But as it appeared to Justinian that owners were too easily deprived of their property under these short periods of prescription, he changed the time to ten and three years respectively. Prescription was specially useful to the Romans, who often held property under defective titles, owing to some slight omission in the ceremonies necessary to convey land, slaves, or cattle. To the moderns it is also of great utility as putting an end after the prescribed time to disputes, especially after civil wars and revolutions, and to the "composing of men's estates," as it is expressed in the Act of James I., which first recognises prescription in the form of "a true statute of limitations of a very imperfect kind."[1]

Maine adds that the Courts, especially the Equity Courts, have greatly influenced the history of property, partly by

[1] *Ancient Law*, p. 285.

creating new kinds of property, but chiefly by the insinuated influence of the framers of equity systems into the minds of the judges. And then he concludes his imperfect history of property by giving a brief account of the origin of feudal ownership, which he thinks was modelled on the Roman Emphyteusis, especially one species of it, exemplified in the military tenures of land along the frontier, in which case there was a double ownership, and land was held in return for military service, which were the two essential features of feudalism.

He again takes up the subject in the *Early History of Institutions*, and he there shows more clearly how land passed slowly but surely from tribal property to household or family property. It passed through the changes earlier in England than elsewhere, and more completely, as the English village community, the Mark, was dissolved and transformed into the Manor much earlier. The waste lands and the common lands mostly became enclosed by the great landowners. England, he thinks, is committed to the principle of private ownership in land, in spite of recent attacks on it (which he considers equally applicable to other forms of property). It is the most fruitful in results. Nothing but the principle of private property could have produced the marvellous cultivation of a whole continent, like that of North America, within such a short time; "from end to end and from sea to sea," as he afterwards repeats.[1]

§ 5

It is rather the history of landed property that Maine has been dealing with, though the history of personalty is also slightly and incidentally treated.

But even where private property in both land and goods had been recognised, the rights of property were formerly more restricted than now. Property was rather family property; the father held it for the family, and could not give or bequeath it outside of the family. His grown-up sons had partly created it, and they, as well as the law, protected it, and it was not

[1] *Pop. Govt.* This is also Bentham's great illustration, *supra*, p. 223.

imagined the father could alienate it from them. What was solely due to the father's own exertions he might apportion at his pleasure amongst his children, as the patriarch Jacob gave out of his own acquisitions to Joseph a larger portion than to his brethren.[1] But the idea would not occur to the father of disinheriting or passing over his children for more distant kindred, still less strangers, though in early Roman times this general view apparently was not taken. The *patria potestas* was unlimited at first over both the person and the acquisitions of children. All that resulted from their labours was regarded as the father's property, and apparently the father could will this away from the family if he chose. The words of the Twelve Tables are explicit: "Uti legassit super pecunia tutelave suæ rei, ita jus esto." This remarkable freedom of bequest, so much out of keeping with the usual ideas of the time, has puzzled many. Maine's explanation is, that the testamentary power was valued because it enabled a man to provide for his emancipated and hence best beloved children, who would be legally excluded if he could not make a will in their favour; not that he would dream of disinheriting his other children. Legislators did not contemplate his doing such a thing, and hence did not make laws to prevent it. They gave him power in the only case they thought he would be likely to desire to use it. This is a good explanation, but hardly a sufficient one, as it does not agree well with subsequent laws made to prevent the heir or heirs from being left destitute. It would rather appear that as the *patria potestas* was so very extensive during life, as all have remarked, it was in keeping with such excessive power that he should have the like over the property after death, to give it as he pleased, even to other relatives or away from his children to his friends; excessive powers over the son's acquisitions in life implying excessive powers over what he felt to be *his* property after death.

Certain it is that the power was frequently made use of, as there were several laws passed to prevent the heir from being

[1] The words of Jacob are—"I have given to thee one portion above thy brethren, which I took out of the hand of the Amorite with my sword and with my bow" (Gen. xlviii. 22).

left bare. Of these, the most important was the famous Lex Falcidia, in the reign of Augustus, B.C. 40, which secured at least a clear fourth of the estate to the heir, while three-fourths might be bestowed in legacies—a principle which, to prevent evasions, was afterwards extended to gifts *inter vivos*, and to bequests in trust (*fideicommissa*), by which the heir was requested to transfer the estate to another. Besides this, we find laws to prevent the children from being passed over; they must be expressly disinherited or the will would be invalidated, and then they got the benefit of the laws of intestate succession, which divided the estate equally amongst them.

Further legislation secured to the children a certain portion (*legitima portio*) of which they could not be deprived, except for serious reasons, such as attempts on the testator's life, accusing him of grave crime, etc.

In these cases we have a reversion to the more natural and general idea, that the property belonged to the family as a whole, whatever differences the father might make in a testament in favouring one rather than the others.

But a differentiation in the mass of property came when the son was allowed to have a separate property during his lifetime in his own acquisitions, over which the father had no control after death. The idea, in fact, came back under the influence of natural law, that all the children had natural claims and expectations on the father's property, and that what the son, being a soldier, or an official, acquired by his own exertions, should belong to himself. So that the children got relief in two ways from the law, both during the father's life as respects certain acquisitions or *peculia*, and after his decease by restrictions on the testamentary power.

The unnatural freedom of bequest and the unnatural range of the *patria potestas* were both greatly contracted, and the improved law has descended to the modern systems of Western Europe, England excepted. In the case of intestate succession, in like manner, the rule that prevailed at Rome of equal shares to the children has descended to the moderns, except as regards landed property in England, which is subject to the rule of primogeniture.

According to Maine, the freedom of bequest that exists in England was originally due to the influence of primogeniture. It is in no way connected with the early freedom of bequest of Roman law. But though an "accidental fruit of feudalism" and primogeniture, freedom of bequest is totally different in spirit from "a system like the feudal land law under which property descends compulsorily in prescribed lines of devolution"; and, on the whole, he thinks it has worked well in this country as compared with the system in France.[1]

§ 6

Next to property, perhaps more than property, contract is the great legal category on which society and social life depends; and Maine gives us a very interesting but incomplete history of contracts, their origin, their kinds, and the general changes in their legal formalities. His account is taken largely from the Roman law, where the materials for a long history of contracts was already at hand.

In the earliest times, and in the simplest social groups, there is small space for contracts or contract law, whether we consider the patriarchal group, wandering and non-agricultural, or, later, the clan or tribe, or even the village community; in none of these cases is there much room for contracts between individuals *inside* the group, while individuals of different tribes or clans could make no contracts that would bind without the consent of the chief; or in cases of the village community, without the consent of all the villagers or the headmen. Only the chiefs or heads could make contracts or covenants, which were more of the nature of treaties, accompanied with ceremonies and solemnities. For another reason, Maine informs us, the sphere of contracts in all early law was limited. The special virtue on which the fulfilment of contracts depends—namely, good faith, fidelity to agreements—is a slow and later growth, as respects all persons outside the tribe, who were naturally looked upon with suspicion, and as probable enemies the nearer they were. To their tribal kindred they would be

[1] *Ancient Law*, pp. 225, 226.

true and faithful, but to outsiders only if it appeared profitable, and breach of faith was very common. Perfidy, the skilful evasion of engagements, was even regarded rather as a virtue, for which a hero like Ulysses was praised, so that, to induce men to fulfil their covenants, oaths had to be added to the other ceremonies accompanying their making, the wrath of their special deities being invoked in case of breach.

But when society passed on to a more individualistic stage, as the cohesion of the primitive groups gave way, as individuals, heads of families, were allowed to have property, real and personal, and afterwards their children, there grew more and more room, and more and more need, for contracts and their legal enforcement as between individuals of full age and not under the power of another. Accordingly we find in ancient law that promises and contracts in certain cases were enforced, provided the due ceremonies, the prescribed forms of words and gestures, were completely observed, the requisite witnesses present. Gradually the ceremonies were reduced, the witnesses dispensed with, the form of words relaxed or dispensed with altogether in certain important cases; the law in this final stage only inquiring if the promise was made, or the mutual agreement come to, without regarding any form of words or ceremony.

All this is best illustrated, according to Maine, from Roman law. The earliest Roman contract was the *Nexum*, where a contract and a conveyance are confused together, a simplified form of which was the verbal contract or stipulation (in which question and answer corresponded). A promise had to be made in a set form of words. All kinds of engagements could be made in this way, but they were not legally binding unless made in the proper form of words, though considerable latitude was allowed in the course of time as to contracts between individuals of full age and not under the power of another.

Then we come to a remarkable class of contracts, called real contracts, because on the bailment of a real thing, by this mere fact, without any formal promise or any ceremony, the law presumed an engagement and pressed on one party an obligation. These contracts were of a very peculiar kind, and

must have arisen in every society that had reached private property. There were four of this class—*pignus* or pledge, *mutuum*, *depositum*, and *commodatum*. Of these the first, which is an extremely old device for raising money, still exists, and has grown ever more and more important. The history of pledge in Roman law is interesting, but Maine does not give it.

Pledge arises, in Roman law, where an individual for the loan of money or something urgently needed deposits some other property with another, in which case the law casts the obligation on the other to restore the property on the repayment of the loan together with interest. This was the origin of mortgage and of all other forms of pledge that exist in our time. At first in Roman law the property was conveyed with all the mass of customary ceremony, but with a right to reconveyance if the money advanced were repaid on a day named (*fiducia*); but as it might be sold meantime or pass into the hands of third parties to the loss of the borrower, the Prætor came to his rescue, and in his Edict laid down that the property should be restored on the debtor offering to pay the amount advanced. A further improvement in the law of mortgage took place when the property pledged was allowed to remain in possession of the owner in certain cases where such an arrangement was beneficial to both parties, as in the case of land pledged by its owner, or the cattle and implements of its cultivation by a farmer as security for the rent. In the case of pledge there was a contract on both sides; in the other three cases the contract is unilateral.

The second contract has a peculiar interest, as Savigny, the great authority on Roman law, considers it the earliest contract of all. This is *mutuum*, where a friend lent to another a certain quantity of wheat, oil, wine, money, etc., in general things admitting of number, weight, or measure, in which case the law placed an obligation on the receiver to restore the same quantity and of as good quality. It was really a gratuitous loan, a friendly act, not an economic transaction for profit; and here, according to Savigny, law first felt called on to protect property, lest an owner's kindness and confidence, or perhaps humanity, should be abused to his hurt and be

made the means of robbing him by the party benefited, and so of discouraging a useful aid to men in necessity, especially in early times. It was the earliest contract, because it was more urgent to protect property than to enforce promises, which it did not undertake till later. This is not Maine's view, who thinks that the verbal promise or stipulation was earlier than any of the real ones, for which, however, he does not appear to give satisfactory reasons.

The next real contract was *depositum*, where an owner deposits a thing for safe keeping with another but without payment, in which case the law vests in the depositary the obligation of restoring the thing or its value, and required ordinary, but not the highest, degree of care on his part.

The last is *commodatum*, where a person borrows for his own use and convenience, in which case the highest care is exacted by law, with the restoration of the identical thing in due time, as agreed upon.

None of these contracts could take place in the patriarchal stage, or the tribal and communistic or semi-communistic stage, as they all imply private property. If a pledge were given for a loan of money or cattle by one chief to another, then it would depend entirely on the good faith of the mortgagee whether he restored on redemption, there being no law to enforce it. It would not be a legal contract where there was no law, but only one binding in honour or morality; but, as Hobbes says, covenants where there is no sword to keep all in awe are mere breath, and the person in necessity, the mortgagor, would suffer, save where he could protect himself as the baron under the feudal system when he got money on pledge from the Jewish lender. Instead of pledge, under the earliest system a chief in need of money or other special commodity would endeavour to get it by an exchange of some other things. He would not part with any of his property without getting the most possible in return for it, and there would be little room for pledge.

Mutuum and *commodatum* might have place, though rarely, as between friendly or federated chiefs, but not in the case of their followers or dependants until they had private property,

when they might arise within each tribe with respect to articles of such property.

The fourth class of Roman contracts, called consensual contracts, is also remarkable. These contracts, like some of our own modern ones, were made by mere mutual agreement, without any special form of words, or without any deposit of things. There were four, the first three of which might be guessed *à priori*,—buying and selling, letting and hiring, partnership, and mandate; the last somewhat analogous to, but not the same as, modern agency. These contracts were early freed from the usual cumbrous ceremonies in order not to impede transactions of daily need and convenience, or clog the wheels of trade and business,—in short, to facilitate the economic and social life generally; and the Roman lawyers, finding these contracts by mere agreement everywhere in use, called them contracts *juris gentium*.

All the contracts of which we have spoken were legally enforceable, but a mere promise not put into due form did not bind, was not enforceable, nor a mere promise or agreement to *give*, until Justinian made such promises binding (probably, as Hunter suggests, to favour religious gifts by preventing the promiser from going back on his word).

Thus then, finally, the Romans had arrived at contract law substantially the same as that in modern legal systems, and these in like manner have been slowly evolved from the time when contracts were few and ceremonial to the present time when they are numerous and made by mere agreement, the exceptions being in the case of important transactions in English law, such as contracts under seal or certain contracts under the Statute of Frauds.

The result of the whole evolution of contract Maine expresses by the formula that progressive societies "pass from status to contract," or from that condition in which each one's position is settled legally and socially at his birth, to that in which each one forms it for himself by contractual relations freely entered into. And, in fact, the whole of our modern life and its expectations, all social and economic intercourse, all that we call freedom, depends on the power to make contracts,

and on their enforcement, if necessary, by law, or the award in certain cases of compensation equivalent to the loss sustained by non-fulfilment. There are, however, some exceptions in the interests of justice or the general weal. Some contracts (as in Roman law) are invalid, as contrary to law or morality, some as contrary to public policy; those made under fraud or mistake, because in those two cases, under a knowledge of the real facts, the contract would not have been made; or under force, or threats, or "undue influence," because the contract does not express the real will of the person coerced. The rule is that men should be compelled to fulfil those of their engagements that are marked off as legally binding, to prevent disappointment and pain, to promote the general good, and to realise the general sense of justice.

The large area of contract is the most characteristic fact of modern society and of its complex and multiplied relations, of our enlarged and expanded life, and expanded freedom, the consequence of the enlargement of contract. At first, contract played little or no part, there being no room for it under the primitive system of the patriarchal family, or the tribe, or village community, the expansion of the family: now it is otherwise. Contract is all in all. But our modern Communists and Collectivists would restore, and restore at a bound apparently, the old system, as far as possible, by the abolition of private property and inequality, and of free contract, which, if permitted, would soon restore the inequality. By the "nationalisation of land, capital, and the means of exchange,"[1] by the prohibition of free contract and a new organisation of labour, it can be all done easily. It will, however, be a more difficult matter than they think, to reverse a system the result of an irresistible evolution, as irresistible as the laws of growth in a living body; a system which was slowly but surely reached in all the ancient civilisations that have perished,—the Assyrian, the Egyptian,[2]

[1] As recommended at the Trade Union Congress at Norwich, 1894.

[2] Assyriologists and Egyptologists have deciphered inscriptions proving the existence of a developed law of property and contract amongst the Assyrians and Egyptians, just as the Old Testament shows the same with the Jewish people.

the Greek, no less than the Roman; which has again been slowly reached by the independent and separate development of every State in Europe, all of which have passed through the same stages to the same final result.

But what has everywhere and always been reached under every civilisation shows an irresistible law of evolution or growth, a law of social progress, one of the great laws that Mill was in quest of. It has been largely assisted, no doubt, by another law, the law of natural selection, and the struggle for existence, and by the psychological law, that man is fundamentally an animal desirous of property, as an extension of his power and an expansion of himself,—is, in fact, the egoistic being which he always was. To reverse all this would, we believe, be wholly impossible; but the attempt, no doubt, might be made; it would lead to the temporary dissolution of society, if successful. But society would be restored, would rise Phœnix-like from its ashes, because the human units being unchanged, after a painful and costly experience they would fall back on their prior experience; and the institutions of property and contract temporarily eclipsed, under which they have on the whole so wonderfully prospered, would be restored, and with them wealth and freedom would return.

Property can indeed be somewhat more rationalised, and the laws of its acquisition made more just, but the principle is sound, is the life of society. The sphere of free contracts may be reduced in certain directions, and the sphere of unjust contracts or those made under undue influence; but in the main freedom of contracts must be preserved, and freely-made contracts enforced; and this, for the well-being, wealth, happiness, and freedom of the greatest number, not less than for that of the rich and well-to-do classes. On all the grounds of utility, of justice, of reason, and necessity, the system must remain in substance; and all that statesmen can do is to remove proved injustice under which the working classes may suffer in the matter of contracts, by forbidding contracts in certain cases, as in others the judges may refuse to enforce contracts where their ignorance or extreme necessity may have been taken advantage of to their detriment. And such partial

retreat of the law in certain directions is right and compatible with its general tendency to favour freedom of contract.

§ 7

Maine's earliest work was bold, original, and suggestive, but it was also incomplete in parts and sometimes erroneous. These deficiencies he tries to correct in subsequent works, which are largely of the nature of revisions of theories and generalisations laid down in his earliest work. Thus his account of the origin of customs and customary law being admittedly wrong, he wrote an emending volume (*Early Law and Custom*); his account of the village community being imperfect and too limited in range, he wrote his *Village Communities of the East and West*, in which he shows how universally prevalent this social type was in earlier times. Meantime new light having been thrown not only on the former village communities, but also on the origin of landed property by the inquiries of Nasse, Von Maurer, de Laveleye, and others, into different early communities, suggested to Maine an examination of the early laws of Ireland, which had never been influenced by Roman law, which therefore might be expected to throw further light upon the questions which chiefly interested him—the origin and development of laws, of government, and of property in particular. Nor was he disappointed. He found clear traces of the origin of landed property, and the causes which led to it; he found light thrown where it was least to have been expected, namely, on the origin of feudalism, and on the "passage from inchoate to complete feudalism," also on the origin of aristocracies, on primitive marriage, and the passage from polygamy to monogamy; while again, not from early Irish law, but from the Hindoo law, in conjunction with the Roman, he is able to give something like a continued history of married women's property.

But he had also gradually found that he had undertaken a larger task than he had anticipated, even though he limited himself to progressive societies, and to three races, the Aryan, Semitic, and Uralian; that the origin of laws implied also the

origin of customs, that an inquiry into the earliest social groups and their subsequent changes and fusions is not an easy task; that in regard to the earliest social unit he had to choose between the patriarchal family, the Roman family, the Roman agnatic group, the Hindoo joint family, the house community, the village community.

He decided finally for the patriarchal family, identified with the Roman family under the paterfamilias, as the primitive group, the unit of later aggregations, a union of which, sprung from a common ancestor, forms the village community and the tribe or clan; while a further union of these last makes the nation. This was his opinion when he wrote *Ancient Law*. He still adheres to it, in spite of objections, in the *Early History of Institutions*. "The most nearly universal fact that can be asserted respecting the origin of States is that they were formed by the coalescence of groups, the original group having been in no case smaller than the patriarchal family." Thus "the hamlets of Attica coalesce to form the Athenian State"; and thus "the primitive Roman State is formed by the coalescence of the minute communities on the original hills." But in a later stage great States are formed otherwise, by conquest, one community conquering another, or one chieftain at the head of a single community or tribe subjugating great masses of population. This was the case with India, which has been repeatedly overrun by conquerors, who yet left intact the primitive village community with its local government and customs, which in Western Europe has been generally more or less destroyed, except in Russia and the Slav Provinces outside Russia.

But again, as he had laid down (*Ancient Law*) that the "civil laws of States first make their appearance as the commands of a patriarchal sovereign," and as he also affirmed that laws tend in the course of time, though not at first, to be more and more the command of the sovereign, it is necessary to inquire into the origin of sovereignty, whether of one or a body, and the different kinds of sovereigns; and this includes the origin of legislative bodies like our Parliament. Moreover, as the sovereign was sometimes an aristocracy or oligarchy, the

question of the origin of aristocracies and their different kinds arises, whether of the military class, or lawyers, or priests, or merely rich men, all of which matters are touched at in his *Early History of Institutions.*

His account of the origin of kings and aristocracies is interesting but imperfect. The chief of a tribe, made up ultimately of patriarchal families, is the earliest king. He has all the natural attributes; he is captain in war, supreme judge in peace, sometimes high priest, though in time, if his dominion increase, he may depute the two latter functions to others. Such were the patriarchal chiefs of the Bible, the Arab sheik, the chief of a large Celtic clan.

After the downfall of the grand fabric of the Roman empire and a long period of confusions, invasions, and conquests, of migrations of peoples and tribes, the feudal system slowly arose out of the chaos, and finally established itself over the greater part of Europe. According to Maine, the chief result of the "feudalisation of Europe" was "the conversion of the mark (or German village community) into the manor," and the transmutation of the patriarchal chief into the feudal lord; the king, whether of England, France, or elsewhere, being only a larger lord, *primus inter pares*; especially was this the case in France. There was a natural tendency to feudalism all over Europe, though the "germs of feudalism" must, he thinks, have lain in the old Aryan customs, awaiting their favourable opportunity and conjuncture of circumstances to grow and ripen. Even in Ireland, where the feudal system, strictly speaking, did not exist, some of the chief features of feudalism were produced. In strictness, feudalism consisted in the tenure of land on conditions of military service and the payment of certain dues. But in Ireland land was plentiful, while in early times the instruments of cultivation were scarce, and thus it was for the use of the chief's cattle that services and dues were rendered; but the same effect was produced by this means as elsewhere by commendation, which was the essence of feudalism.

The feudal chief was essentially the patriarchal chief "who had passed through the crucible of feudalism." Elsewhere, he

says that the feudal group (the fief) was not a true archaic group, since its members were not kinsmen, but for the most part strangers recruited by infeudation and contract. The latter is true; but if so, it is not easy to see how the feudal lord was essentially the patriarchal chief revived. The essence of feudalism lay in its relation to the land; it was landholding for military service; to the feudal lord the service and dues were rendered. Hence the feudal group was different and the feudal lord wholly unlike the patriarchal chief, who claimed to rule his kinsmen from being the most direct in descent from the first founder of the race. The patriarchal chief ruled kindred, whether settled on land or not; the feudal chief ruled a body mostly not of his kindred, and settled on land. Some resemblances, no doubt, there were between a feudal lord and an Irish or Highland chief, but the differences were very considerable and peculiar; one great one being the existence of better and more moral relations between the chief and the clansmen, greater devotion and loyalty on the side of the latter, better protection, kindlier feelings on the side of the chief.

According to Tacitus, the German tribesmen were originally equal. This may be doubtful. But when they emerged from the German forest they had leaders. Were these necessarily patriarchal chiefs? Was it not much more likely that in their ceaseless wars they found their chiefs in the bravest and ablest? They found it necessary to give the lead to their best, and it is well known they made the ablest leader of all their king, raised on the soldiers' bucklers. This was certainly one origin of the chief, and later on of the feudal chief, and the order was continually being recruited by new and approved men, able to lead, as the wars continued. Such was even the origin of some of the English barons who came over with the Conqueror, who were not all noble when they landed in England. It was perhaps a less frequent origin in Ireland or Scotland, where respect for the patriarchal chief, as the only one who had a right to rule, still prevailed, from insularity to some extent, but more from an instinctive feeling of what was natural and fit.

Maine's account of the origin and spread of feudalism—that great system which lasted for nearly a thousand years, which has left its mark in our land laws, and its spirit deep in our manners and life—is less satisfactory than might be desired. No doubt the subject was obscure. In its relation to the ownership of land its original model, he thinks, was perhaps the Roman Emphyteusis, especially that form of it along the Danube frontier where land was let to veterans in return for military service. In its legal aspect it was a compound of "barbarian usage[1] and Roman law," the latter borrowed for its convenience by the barbarians, amongst whom feudalism arose. It spread owing to the universal state of war, as it made each group strong for defence. It rested on two things —the benefice and commendation; the latter also due to the violence of the time, but the essence of it all was contained in the original Aryan customs.

The amending statements do not add much to what he tells us in his earlier volume. But he gives a fuller account of the origin of primogeniture, which he describes as an "effect of tribal leadership in decay." Because, during general wars, a capable and mature leader is necessary; and hence the uncle or near relation will be chosen as leader from necessity, and the heir by primogeniture set aside if he is too young. But in more peaceful times, from respect for purity of blood, the claim of the first-born of the last chief is revived, even though he be young or unproved, as a leader.

We have an interesting account of the natural rise of aristocracies other than the feudal. One very general origin in antiquity was wealth, as it is still an origin. Amongst the ancient Irish, wealth was one way to aristocracy, if not to honour. The "cow-nobleman" was he who became noble from the multitude of his cattle, but he could only attain the distinction slowly. The qualifications for leadership are given, and are worthy of note. "Thus it is laid down in the Brehon laws, that the head of every tribe should be the man of the tribe who is the most experienced, the most noble, the *most*

[1] *Ancient Law*, p. 135; but in the *Early History of Institutions* he substitutes "Aryan" for "barbarian" custom.

wealthy, the most learned, the most truly popular, the most powerful to oppose, *the most steadfast to sue for profits and to be sued for losses*"; which is not a bad list of qualifications, as amongst them Plato's two are to be found, wisdom and virtue (including capacity); but wealth or property is also included, which Plato denied to the governors of his ideal Republic; but to the possessors of which Burke, not planning for Utopia but France and England, would give the greatest power.

According to Maine, the popular account of the origin of aristocracies (it is also Hobbes'), namely, kingly grace, is quite a modern thing, and was not the origin of the feudal noble. The French feudal lord would have resented the view, for he was as old as the King of France. It would appear that some of the nobles were originally the "Companions of the King," who were expected to render personal services not always held as dignified. Thus we have the Mayor of the Palace, the Steward of the royal household, whose descendants became noble and even became kings.

This account of the rise of aristocracies is too brief.[1] But what comes out of significance is that aristocracies, men of light and leading, arise necessarily in all societies, from the earliest times; that there is as little equality of capacity as there can be of property; and that, wherever there is this inequality, aristocracies of both sorts will arise, and, though one of them may be of a higher character, it is perhaps not so useful in modern times to the community as the other.

To the historical method applied to law and government, and to society as held together by such, we look to obtain the origin and main changes of law in general; the origin and development of different social organisms from the simplest to the most complex; the origin of kings and governing classes; and a certain amount of all this we get from Maine. But it should also furnish us with the origin and evolution of constitutions and public institutions; also the principal changes in the modern legal systems of progressive nations; something

[1] For a better account, see Herbert Spencer's *Political Institutions*, chaps. vi. and x.

more than the very general law that they are improved successively by fictions, equity, and legislation; something general, but more special,—the minor generalisations are wanted. No doubt, for example, judges improved law by equity, but also governing classes sometimes legislated in their own interests, sometimes changed law in a direction the reverse of equitable, the reverse of an improvement. Perhaps even the judicial interpretation may not have been uninfluenced by class or professional bias, as Bentham urges. The more important statutes and important legal decisions should be digested; the general principles they contain, together with such other generalisations as they may suggest to the philosophical jurist, should be set forth.

Of course, to do all this, to write the history of laws and constitutions, would be impossible for any one person, and Maine is not to be blamed for not attempting it; perhaps he never contemplated it. But he notes that a history of law "is perhaps the most urgently needed of all additions to English knowledge,"[1] and that next to it what we most require is a "new philosophy of law." What he himself wished to do was to apply the historical method to public institutions, as he had applied it to the institutions of private law. This part of the work he never found time to accomplish. But an instalment of it he was able to give to the world in his work on *Popular Government*, an epitome of which will be found later on.

Whatever his deficiencies, to Maine belongs the credit of having been the first in this country to apply the historical method of reasoning to law and government, in general to political philosophy, the first to have clearly seen its nature and range, which Mill had not seen, and the result has been to place on a sounder and wider base the science of law and politics.

But there is still something wanting. History explains what

[1] This has now been supplied by Professors Maitland and Sir Frederick Pollock in their learned, interesting, and masterly work, in which some of the chief doctrines of Maine receive their necessary and due limitations.

is by what has been, the present facts by the past series of antecedent stages or causes. But it does not explain sufficiently why property and contract are necessary, from principles of human nature, as well as from outward circumstances, and yet at all times there is a psychological explanation as well as the historical one, and the former the more fundamental. The nature of the human units was such all along that social organisms took such forms; the feeling of kinship, loyalty to chief, made the clan and the village community, while narrower egoistic feelings, and special affection for wife and child, later on led to the break-up of the communities and the introduction of private property. The love of wealth, of power, of distinction, all powerful egoistic feelings, did much towards the same result, as well as the natural and instinctive feeling that each one should justly have the fruits of his own exertions; in short, a number of natural feelings, largely egoistic, always existing potentially in man by his very nature, as Hobbes said, must have had much to do with the change—feelings which the primitive community repressed, but which a régime of property and inequality greatly favoured. The part played by the qualities of human nature, as well as by general historical causes, is not sufficiently brought out by the historical school. And certainly, as Mill says, historical generalisations should be capable of being deduced from the general principles of human nature, as an additional guarantee of soundness.

Even our present laws must be founded on principles of human nature (as well as be generally beneficial to the community); and it is because they are so, and because human nature is largely alike in different civilised countries, that their laws are so much alike on the whole.

§ 8

I have now to note the great defect in Maine's conception of jurisprudence, namely, the denial, express or by implication, of natural law (and natural justice), which has been believed in by all writers on the philosophy of law from Aristotle to Kant. The Roman lawyers, the canon lawyers, the civilians, English

chancellors, and equity judges, as well as continental lawyers, all believed in it. Hooker, Hobbes, Locke, Hutcheson, nearly all English moral philosophers, including Butler, the greatest of them, believed in it; as did Kant, the greatest of the continental moralists; while Herbert Spencer, the most original English philosopher of our generation, believes at once in natural law and the efficacy of the historical method.

There is, then, a law of nature, as there is a moral law, of which it forms the most important part. It is pointed out by conscience or moral sense or moral perceptions, that particular part of the moral field which concerns justice, the rules of which can be laid down with greater precision than in the case of the other virtues, and which, provided they are fit to be enforced by the public sword, is natural law in a special sense. It can be discovered by our natural sense of justice or equity (which is part of our moral sense); its area can be enlarged and made clearer by reason, especially the reason of moral philosophers, jurists, equity judges, and chancellors. But its existence is not believed in by Bentham; it is derided by Austin; while Maine appears to think its existence dubious, that the believers in it confound what is with what ought to be, sometimes thinking it realised in part in existing law, sometimes merely that it ought to be, while in the latter character it may be, and in modern times has been, of an anarchic and dangerous tendency.

But it would not be difficult to show that he himself believes, or ought to believe, in the law of nature; because he affirms that the Romans improved their laws, greatly to their benefit, by their theory of natural law; and that most modern nations have done the like. But can it have been a mere nonentity or a phantom that they were following which thus proved so useful a guide?

Moreover, Maine admits that our own laws have been improved from a sense of equity; but this equity, which, as he says, is based on advancing morality, and these higher feelings of morality appealed to, are really part of natural law, and are expressly referred to natural law by equity judges, and

even by Maine himself. Finally, he tells us: "The greatest function of the law of nature was discharged in giving birth to modern international law," which is expressly based on three postulates—(1) There *is* a law of nature. (2) This law of nature is binding on States *inter se*. (3) "Sovereigns are related to each other like the members of a group of Roman proprietors," to whom certain doctrines of natural law apply. But if natural law has had so grand and illustrious a history, save in France for a few wild years after the sovereign people first entered into its inheritance, why doubt of its existence, or deny it with Bentham, or declare it to be a "convenient mystery"[1] with Mr. John Morley, unless our sense of morality and sense of justice be mysterious, or our feeling of a thing that ought to be, but which is not yet in existence, save only in part, is a mystery?

Maine, at all events, declares formally that "the theory of natural law is still the great antagonist of the historical method." And this may be true in the sense that the former was thought to be a sufficient theory without historical knowledge; sufficient to stand for a science of jurisprudence, without the history of law or institutions; sufficient for the reform, both of government and law, without consulting history or experience. But there is really no contradiction, no natural hostility, between the historical method and the theory of natural law or natural rights.

The matter is of the utmost importance in the philosophy of law and politics. Indeed, it is not too much to say that the whole future of society turns on a right understanding on this point. If there is no natural law, no natural rights, and hence no natural justice as the chief part of natural law, if there is nothing but considerations of utility to determine justice, as Bentham and Austin contend, it will be impossible to find any precise rules of justice. If legal rights are not based on natural rights pointed out by innate moral perceptions made gradually clearer by reason, they are mere arbitrary impositions founded on might. And that the just is not resolvable into the generally useful is shown by this, that the perceptions and

[1] See his interesting *Life of Rousseau*, vol. ii. p. 231.

feelings of justice and natural right appear earlier than the knowledge of the general utility of justice; or we can know that a rule is just before we can be sure that it is generally useful, still more, that it makes for the happiness of the greatest number. It may be discovered subsequently, that what instinct and reason point out as just and what reason confirms, is also that which most promotes general happiness or well-being, as in the case of ownership; but it is an after-discovery, and one which may not even be made, though doubtless it often is made. A community of the lower animals instinctively recognise natural rights, though they were not led to their rules of distribution by perceptions of the general utility. True, their habits and acts do tend to the general utility, or rather to the conservation and well-being of the aggregate group, the weal of the social organism. Shall we, then, say that the rules of justice are those that most favour the weal of the social organism?

But such rules were known and carried out in primitive communities of men before they were known to be for the general good of the community. They may tend always to the general good, but this perceived tendency was not the origin. The origin, the first perception of the idea of justice, is given by the moral sense or sense of justice. It is instinctive; we are born with a predisposition to it, the result of heredity. It appears early in children, who in play with each other show their sense of it; and of the innate feeling of "mine" and "thine," which appears much earlier. Certain phrases mark the early appearance of the notion of natural rights, and of the law of equality of rights in certain cases. "I have as good a right to it as you have," "as good a right to be here as you," and so on. Again, immediate anger at wrong or injury done to them shows the instinctive sense of justice and injustice. They feel that certain acts are just and "fair"; the contrary ones wrong and unfair. The instinctive notion of property which appears in the child is seen in developed form in the schoolboy. The bird's nest that he first discovers is "his," and so are the young, and both by the right of the first "occupant." If he finds an article he feels that it is not his unless no

owner can be found. If he makes a ball or a kite out of his own materials he feels that it is his, and other boys feel the same. He knows or feels that another has "no right" to strike him without provocation, that if the other does so he may retaliate; that another should not tell lies about him, to the hurt of his good name; should not prevent him from doing what anyone else may do, and which is not forbidden by the headmaster. He feels that if he makes a good bargain in his small world of exchange, it should be carried out; or if he makes any kind of simple contract, promises to give or do something in return for something to be given or done, that both sides should keep their promises. He feels nevertheless that he should not be held to a bargain made under deception, or to a promise extorted under force from a bigger boy, if another bigger one or the master released him on the matter coming to their knowledge. In general, schoolboys know that promises ought to be kept, though there may be no means of enforcement except the general opinion of the school, which might show itself disagreeably against unfair things, just as it might set itself against sneaking or mean actions, or generally against "bad form," though the latter would not be so instinctively known.

I do not mean to assert that an inchoate system of rules based on our natural sense of justice is presented by the embryo social organism which a public school presents, but undoubtedly the elements of an instinctive code of rules are to be discerned resting on the sense of justice rather than on utility or the general good. In this case the headmaster corresponds to the absolute monarch, and his commands are laws in Austin's and Bentham's sense of the word, that is, general rules over and above the rules of morality and the rules which boys impose on each other's conduct—rules resting on utility, or intended to raise the external character or its internal tone. His aim might be in part the happiness of the boys in the school at the time, but also it might be to make the school, as a perpetual institution, more efficient, to make the pupils better scholars, but also to elevate their character, to form their manners and their morals up to a higher standard, to make

them at the same time manly and religious. But all the time the boy's own sense of justice and right, founded on instinct, is the source of the code that prevails amongst the boys themselves, though it may be supplemented by certain traditions of the school.

Thus the theory of the law of nature and natural rights is not fog or "fustian," as Austin, imperfectly acquainted with the history of moral speculation, imagined. It is sound doctrine, older than his theory of utilitarianism, and more applicable to practice; and if jurisprudence must make choice between the two for its ethical base, the former furnishes a better one. It is easier to find the just than what is conducive to the happiness of the greatest number (or even the weal of the social organism). The former, what is just, is derived from our feeling or sense or perception of justice. Most people have some sense, some perception, of natural justice; to the learned and acute it belongs to elaborate special rules to make the science of justice or right clearer, or to decide what is just in particular cases. Our equity judges have done this up to the moral level of their own age. When higher and more delicate perceptions of justice arise in the minds of original moralists, equity judges should be apt to apply this increasing moral light. In short, the rules of justice rest fundamentally on natural justice and natural rights, supplemented by considerations of utility. Herbert Spencer is the first of our English philosophers who has seen this, and pointed out the error of Bentham and Austin, who make legal rights the creation of the sovereign, which they cannot be unless the sovereign can make something out of nothing. Legal rights, if they are what they ought to be, are simply the expression of these natural rights decernible by the sense of justice, and armed with a sanction. These rights would exist if there was no sovereign, as Locke and Hobbes both tried to show; only that they would exist in a precarious state, unless people were moral, had a strong sense of justice, were not certain to be carried away by their passions to violate them, and to do injustices when judges in their own cause.

The attempt to follow natural law may in the long-run

realise the greatest happiness, as Maine says it did in the Roman world; but also it might produce temporary widespread misery and anarchy, as it did in France at the Revolution. And if natural law alone be regarded; if the teaching of history, including the history of law and institutions, be disregarded; if the principles of natural law are not checked by considerations of general utility as a chief part of natural law; if the reforms suggested by it are not carried out slowly, but attempted at once and altogether; finally, if no regard be had to prescription, anarchy would be the logical and practical outcome of the doctrine. It must be held subject to the lessons of history, which shows what has always and everywhere been held as just, and which, as giving the long experience of our species, must now be considered as necessary; history, which shows us again the universality of prescription, which gives rights to possessors after a certain time, and deprives original owners of them, the most important class of cases in which abstract justice and natural rights have to give way before the exigencies of utility. Why is prescription allowed to found a valid title to property? Because of its paramount utility in composing, in putting an end to disputes, without which it might almost be affirmed that Hobbes' state of universal war would return.

To avoid anarchy, the doctrine of natural law must then give way to utility in certain cases, and in fact with the Romans many of the precepts of natural law were founded simply on utility or general convenience, just as many customs and civil laws were founded on utility; a just law in these cases being that which was obviously and generally useful, where abstract justice could not be appealed to. And prescription comes under this head. Its utility is great, and it was early made part of the civil law by the Romans, and copied into modern systems from them.

But though natural law must bend in cases of conflict to utility, the total denial or ignoring of natural law and enthroning Benthamism, and making the greatest happiness of the greatest number the sole test of good legislation, will be just as likely to lead to anarchy if carried out unflinchingly, and

in all directions, as Bentham desired it should be. I grant that it would not do so if the sovereign people, the greatest number, really knew their own interest. But suppose they think that their greatest happiness would be best consulted by an equal division of wealth—a view that Bentham does not hold—but which men uninstructed in political science or political economy are very likely to hold. Suppose they believe that inequality in wealth is not the state in which the general happiness is best promoted, and should set themselves to abolish inequality, anarchy and misery would very speedily result, though the majority might not believe it would be so until a painful experience had taught them the lesson.

But the doctrine of natural law justifies private property as founded on natural rights, while the historical and the comparative method merely show it as a universal fact. According to Burke, natural law even justifies prescription. This is a doubtful point, and it was denied by the canon lawyers. Accordingly it would seem best to rest its claim on utility, which we have shown to be a supplement and sometimes a check on the conclusions reached by natural law as well as a determinant of part of its contents.

In the eighteenth century, indeed, the appeal to natural rights produced temporary chaos in France and elsewhere; but it also resulted in widening the reign of justice, and in the end in a great increase of the general happiness and wealth, while it restored the dignity of man first proclaimed by it, which was reaffirmed by Christianity, but which had been gradually lost. It resulted also in the restoration of certain natural rights to the people of other countries, as well as France—both political and civil rights. This happened in England, too, and was the more likely to happen in a country in which the people had risen against their king a hundred years before for their civil and religious rights. It may now be said that they have nearly conquered their natural rights in full, or if not, that they are in a position of great strength for prosecuting any further just claims.

But the doctrine of natural law can now be turned against

the working classes if they should go further and attempt to carry out levelling or confiscatory ideas. For property is justified by natural law, depending as it does on principles of human nature, and specially on our sense of justice. Freedom of contract also depends, as the general rule, on our natural rights to liberty, so far as their exercise does not hurt others. There are modes of acquisition resting on natural law, others, everywhere recognised, which depend on utility, general convenience, so that only wrong modes of acquiring property, and immoral or bad contracts, made under mistake or fraud, or force or undue influence, are to be condemned.

History has also shown the necessity and universality of our present system of contract and property. Bentham has shown that both conduce to the general happiness, save as respects the laws of inheritance, and that anarchy and chaos would result from the abolition of property; but the theory of natural law alone can show that property and contract conform in their essence to the principles of justice, though abuses may creep in, so that things have been made property that ought not to have been so made, and unjust contracts have been permitted and enforced which it should be the business of equity and wise and just legislation to correct.

This theory of natural law, formerly held by all English moralists, has been denied or ignored since the ascendency of the utilitarian school. According to Austin, there are no natural rights, whether to property, life, or liberty whether of conscience, speech, or actions. There are only legal rights resting on utility. And if this be so, property, life, and liberty are at the mercy of the sovereign, be it one or a few or many; in England, dependent on the mere will of the numerical majority, which might to-day confiscate or even abolish property, and next year restore it according to its ideas of its own interest: if this be so, might alone makes right, and it would be vain to urge that property is recommended and justified by considerations of utility, as the majority might think otherwise. On the other hand, each one of the majority has a sense of justice as part of his moral nature, and to this we can make appeal on surer grounds. It may be observed that

Bentham himself admits a tendency to private property before law existed, and if so this inchoate property cannot owe its creation solely to law, but must have been due to the sense of justice, as well as the discovered general advantages of property, that is, to both justice and utility. Apply the test of utility, of the general happiness to laws, and changes will result. Apply the doctrine of natural rights, and changes also will result; but there is a limit to them in this case, and all classes can appeal to the sense of justice as a limit, because it is a measure that all possess, rich and poor alike, employers and employed.

Thus then, finally, legal rights, rights of property, contractual rights, etc., are founded on natural rights or on utility. Those founded on natural rights are mostly conducive to the good of the greatest number. There may be, though rarely, a collision between the two, utility and natural rights, and when there is the natural rights must give way to the interests of the great majority, *e.g.* when a proprietor is forced in the general interest to sell his property, in which case his right is invaded, but the doctrine of natural law in such a case prescribes adequate compensation for the right set aside.

It is not within my purpose at the end of this book to set forth in detail a philosophy of law founded on natural rights, but only to say that the ignoring or denying natural rights, alike by the analytical school of Bentham and the historical school of Maine, is, in my opinion, a fatal omission in their views of the science of jurisprudence; in the case of the former it is in effect the denial of an original independent notion of justice, and the resolution of it into utility. The just, on Bentham's view, is the generally useful, that which most promotes happiness—a view which would justify slavery if the slaves have more material comfort than they would have if they were set free. In Maine's case, though, on the whole, he does not believe in natural law or natural right, yet he thinks the hypothesis has been, as a historical fact, useful to the Romans and to the moderns up to the eighteenth century, when in the hands of Rousseau it tended to the anarchic explosion that followed. It must be admitted that natural

law was the main weapon by which feudal abuses and oppressions were attacked in France; but it was a perverted notion of the sovereign people directly exercising sovereign attributes without representatives or agents that was the chief cause of the anarchy. The doctrine of natural law has since borne other and better fruits. But it can no longer be made a weapon of attack on the richer classes. On the contrary, it is now the great defence of the natural rights of property, old as the world.

Maine has ascribed all the reforms in English law to Benthamism, of which he affirms that the Roman theory of natural law was the "counterpart." I think he has rather over-estimated the effect of Bentham; much of the law reforms of this century being made by legislators under their sense of justice, with little regard to Bentham's utilitarianism. It is true that, when justice was aimed at, general utility commonly resulted, and this will continue, and most fortunately, since it is easier to discern what is just than what conduces to the general utility or the happiness of the greatest number. But, secondly, if natural law worked so well for the Romans and Benthamism, its "counterpart," so beneficially for ourselves, why not have a little more confidence in the older theory that aimed at justice, but constantly realised general utility, than in the newer one, when it is acknowledged to be so difficult to know what makes for the general happiness if sought irrespective of justice, which is the shortest and clearest route to it from the legislator's point of view?

It is granted that the whole theory of natural right must be supplemented and limited by considerations of utility, of reason, and of necessity, what history and reason alike show must be, and cannot be prevented.

It is the historical method chiefly that teaches what *must be* from what has always and everywhere been, from universal and eternal experience. But it is the doctrine of natural law which shows what *ought* to be in general, in conformity with justice chiefly, but also with utility and necessity. Finally, there is no necessary antagonism between the historical method and the theory of natural rights, as Maine

believes. All through the historical development considerations of natural justice as well as of utility were forces at work to produce changes in laws; while sometimes the selfish interests of ruling classes, military or priestly, effected changes; and sometimes, even though rarely, the commands of a despot.

II. ON POPULAR GOVERNMENT

§ 1

In the preface to his work on *Popular Government*, Sir Henry Maine tells us that he had desired to apply the historical method to political institutions as well as to private law and institutions, but that, just as in the case of private law, a mass of *à priori* ideas deduced from the assumption of a state of nature and the law of nature seriously stood in the way, and claimed a monopoly of the field of political philosophy.

These *à priori* ideas, as is well known on the Continent, though not in England, emanated from the speculations of Rousseau, which condemned all governments, except democracy, as illegitimate—a view which dispenses with all experience and observation. Maine, on the contrary, in this volume proposes to test these ideas and the current opinion on popular government, which is largely derived from them, by a body of facts respecting popular constitutions, accumulated since Bentham, the English eulogist of democracy, wrote "sixty or seventy years ago."

When Bentham wrote, he necessarily employed the deductive method, because he cared nothing about remote history, and there was little to go upon in modern times respecting democracy, except American constitutional experience and the unfortunate French experiments during the Revolution.

Maine's own method is not quite the historical method as he himself has described it, but rather a method which confronts the *à priori* theories with facts gathered from contemporary observation, recent history, sometimes remoter history, and which occasionally meets deductions drawn from human nature with like deductions.

He commences with a short history of popular government since its modern introduction, and concludes that this history proves it to be of an extremely fragile nature. Is there any general cause or causes discernible? Yes. The modern military spirit and military organisation, which exacts the soldier's unquestioning obedience to his superiors, has often led to the overthrow of popular government. There is also the modern growth of irreconcilable opinions. Experience has taught us thus much about its instability; but there are certain difficulties inherent in democracy that might have been known without experience, and which, in fact, were noted more than two centuries ago by the "powerful intellect of Hobbes." Political liberty, Hobbes has said, was political power, not "the desolate freedom of the wild ass." And in large and popular democracies this means power minced into such minute fragments that its holders (the voters), if left to themselves, would care extremely little about its exercise; so little, indeed, that their votes would be largely sold in England if the law did not forbid it, as they are in America in spite of the law.

This situation gives rise to the intervention of the wire-puller, the real leader in modern popular governments, who gathers together and utilises these small portions of political power. And this he is enabled to do through the instrumentality of Party, a universal fact of human nature, probably flowing from the early combativeness of mankind and the innate tendency to take a side. Without this fortunate circumstance, the wire-puller would be powerless and at pause; with it he can be the real ruler, direct the course of policy, make multitudes do as he wishes. His business is to fan the party spirit to a flame so as to hold the partisans firmly together, draw the bonds tight so as to make it hard to break away. Of course, all effective devices will be copied by both parties; a new discovery in management cannot be confined to one party. The result is to make all parties more and more alike, and "their opinions and the resulting policy will less and less reflect the individual mind of any leader, but only the ideas which seem to that mind to be most likely to win favour with the greatest number of supporters." It must lead to more

and more extended suffrage, even though universal suffrage has rather gone out of its former high favour with Radicals, since it once led to despotism in France and had been taken up by Prince Bismarck. Suppose, then, the most extended suffrage possible has been reached; suppose that every adult man and every adult female has a vote, and suppose the electoral machinery has extracted their vote from all, what is likely to be the result of impressing this huge dead level of average opinion on legislation? The Radicals think it will be on their side; and perhaps it would be at first, and so far as the extensive destruction of existing institutions go. In the end it is far more likely to issue in a mischievous kind of Conservatism that would listen to no scientific conclusions that ran counter to its prejudices—fatal to all that Liberalism has considered progress.

This is not too much to say. Let any "competently instructed person turn over in his mind the great epochs of scientific invention and social change during the past two centuries, and consider what would have occurred if universal suffrage had been established at any one of them. Universal suffrage, which to-day excludes Free Trade from the United States, would certainly have prohibited the spinning-jenny and the power-loom. It would certainly have forbidden the threshing machine. It would have prevented the adoption of the Gregorian calendar; and it would have restored the Stuarts. It would have proscribed the Roman Catholics with the mob which burned Lord Mansfield's house and library in 1780; and it would have proscribed the Dissenters with the mob which burned Dr. Priestley's house and library in 1791."

It may be thought that better popular education would prevent such errors in the future. Universal suffrage, it may be allowed, would not force such legislation on governments as it would have done in the past, but we do not know what great new improvements may be in the womb of time, which may run counter to the prejudice of the many in that future. They are at the present time opposed to the central generalisation of political economy, shown to be still more general by Mr. Darwin's *Theory of Natural Selection*, the Malthusian principle of population. "It has long been intensely un-

popular in France and the continent of Europe," and even amongst ourselves proposals for recognising it in connection with schemes of emigration are set aside in favour of other schemes ignoring it and the law of diminishing return.[1]

It may be thought that wise leaders will be a safeguard against these and other dangers. But what if the leaders do not lead, but listen to the suggestions of a lower intelligence, and allow programmes to be dictated to them? And the tendency over Europe appears to be the dictation of a policy by the many rather than its formation by the capable few. Consider the case of Switzerland, for instance, where the "Referendum" is coming more and more into vogue.

And here we have the first infirmity of popular government; the wider the electoral base, the greater the tendency to a dead level of cosmopolitan opinion, which rulers are compelled to make the standard of legislation and policy, the "common sense of most," as it was glorified by Tennyson in his earlier days.

It is not from societies like our democracies that improvement has come in the past. It has come from aristocracies. The Athenian so-called democracy, under which art, science, and philosophy shot up so wonderfully, was "an aristocracy which rose on the ruins of one much narrower," and the like holds in other cases.

As to the progressive overthrow of existing institutions, to what end? Artisans and agricultural labourers will use legislation "for what they may be led to believe are their own interests." They are dissatisfied with the unfair and unequal distribution of wealth, "which democratic law will some day correct." Let them try it, Maine says. "In doing so, they would resemble not a number of claimants insisting on a fair division of a fund, but a mutinous crew feasting on a ship's provisions, gorging themselves on the meat, and intoxicating themselves with the liquors, but refusing to navigate the vessel

[1] P. 37. This principle of population is not generally accepted without qualification; and elsewhere he affirms that political economy is not strictly a science, so there is some justification for the attitude of the many as regards this supposed scientific doctrine.

to port. It is amongst the simplest of economical truths that far the largest part of the wealth of the world is constantly perishing by consumption, and that if it be not renewed by perpetual toil and adventure, either the human race or the particular community making the experiment of resting without being thankful will be extinguished or brought to the very verge of extinction."[1]

What he is most afraid of is, that the democracy will tax the rich for their own benefit under the name of philanthropic purposes, and with the result that the heart and energy to labour and save may be taken out of the saving classes, who may relax their efforts, and that a general material poverty may result as happened in the Turkish empire. The future of popular government depends, to a great extent, on whether the working classes seek to benefit themselves by class legislation and taxation of the wealthy, or whether they depend on their own efforts and energies. There are only two sets of motives by which abundant wealth can be produced. "One is economical competition, which leads to wealth and inequality with it; the other consists in the daily task, perhaps fairly and kindly allotted, but enforced by the prison or the scourge. So far as we have any experience to teach us, we are driven to the conclusion that every society must adopt one or the other, or it will pass through penury to starvation."

His final conclusion, he thinks, may seem trivial. It is simply that the British constitution has lasted for a considerable time, and therefore popular governments elsewhere may last. But the British constitution up to 1884 was "a thing unique and remarkable," and on the whole successful; the envy of the world, which other nations copied, but, with the peculiar exception of the United States, not very happily. So that, finally, the only evidence worth mention in favour of a long duration of popular government is to be found in the success of the British constitution during two centuries under special conditions, and in the success of the American constitution during one century under conditions still more peculiar and more unlikely to recur.

[1] *Popular Government*, p. 46.

On the whole, this is an able and suggestive essay, a little pessimistic, and not very original. For Mill also pointed out the danger of class legislation and the taxation of the rich. His conclusion, too, is somewhat like Carlyle's, who anticipated a short career for parliamentary government and the stump orator, which, and not the wire-puller, he considered its peculiar and worst product. Carlyle also thought it would probably be terminated by some Cromwell—for we ourselves have had a little experience of the subversion of the constitution by the military spirit, to which for some reason Maine does not expressly refer. Carlyle also noticed another characteristic infirmity of our popular government, or government by public opinion, which he compares to the navigation of a ship by a "phantasm captain," by taking directions from the shore. In his opinion there was no cure for the evil short of its total abolition, for democracy had never really succeeded, and was on its trial even in the United States.

I believe that both Maine and Carlyle have exaggerated the infirmities of parliamentary government, for reasons given before, which need not be repeated. All that need be said here is that there has been no unjustifiable taxation of the rich since the time Maine wrote; while in 1895, under a most widened suffrage, the most Conservative Government since 1832 was returned; nearly all the Socialist and Labour candidates having been rejected at the polls.

§ 2

In a second essay Maine enters more particularly into the nature of democracy, notes its peculiar difficulties and the dangers that beset its course, and suggests finally the only safeguards he can think of.

What is the proper meaning of democracy? he asks. It is simply a form of government in which the many are supposed to govern. As a form of government, it has the same general ends as any other. It must preserve the national existence, and to this end must have able generals, statesmen, administrators, skilled and cultivated diplomatists; it must secure

order, make the laws obeyed, and as respects these several ends it labours under special difficulties. Such being democracy, merely a form of government, whence the enthusiasm or the terror its advent excites? His reply is that democracies are supposed to legislate more, to alter laws and customs in the way of reform. This is not quite true; monarchies legislate also. What is true is that both monarchies and democracies are at first highly destructive, and legislate accordingly. "What a modern democracy fights with is privilege; and it knows no rest till this is trampled out." But such legislation, he thinks, is transitory; in the long-run there may be very little legislation, as witness the small amount in the United States as compared with that in England. So in the case of Switzerland, the people desire little new legislation, and they have, even to the surprise of Radical leaders, rejected Radical measures by the Referendum.

The opinion that there was an irresistible tendency through the ages towards democracy is quite modern, and chiefly due to De Tocqueville's book on *Democracy in America*; but, according to Maine, it is altogether unsupported by the history of the last two thousand years. De Tocqueville based his sweeping conclusion chiefly on the single example of America and the return of the democratic ideas of the great Revolution in 1830, when the Bourbon dynasty was overthrown in France. Democracy is only irresistible if the classes who could check it continue to say to themselves and others that it is irresistible.

The enthusiasm in its favour is as modern as the belief in its irresistibleness. It was not shared by Aristotle and Plato, the founders of political philosophy, who, in spite of all that Grote can say to explain away the fact, thought it a bad form of government. The panegyrics now addressed to it are of French origin, coming from the oratory and literature of the first French Revolution, rehabilitated by Lamartine in his *History of the Girondins* (1847), and Louis Blanc in his *History of the French Revolution* (1847–62).

History, Maine tells us, is the safeguard against these delusions, extravagances, and false historical generalisations. At the very dawn of history we find all three forms of

government—monarchy, aristocracy, democracy. Aristocracy seems to be gaining on monarchy, and democracy on aristocracy. The Athenian Republic was an aristocracy, so was the Roman Republic. On the fall of the latter, for seventeen hundred years it was monarchy that was gaining—"there was on the whole for seventeen centuries an all but universal movement towards kingship." Evanescent revivals in Italy of popular government there were, but all the Italian Commonwealths, as well as all the feudal estates and Parliaments, "with one memorable exception (our own), sank before the ever-growing power and prestige of military despotic governments."

"The historian of our day is apt to moralise and lament over the change, but it was everywhere in the highest degree popular, and it called forth an enthusiasm quite as genuine as that of the modern Radical for the coming democracy. The Roman Empire, the Italian tyrannies, the English Tudor monarchy, the French centralised kingship, the Napoleonic despotism, were all hailed with acclamation, most of it perfectly sincere, either because anarchy had been subdued, or because petty local and domestic oppressions were kept under, or because new energy was infused into national policy. In our country, the popular government, born of tribal freedom, revived sooner than elsewhere; protected by the insularity of its home, it managed to live; and thus the British Constitution became the one important exception to the 'tendency of the ages,' and through its remote influence this tendency was reversed, and the movement to democracy began again. Nevertheless, even with us, though the king might be feared or disliked, the king's office never lost its popularity. The Commonwealth and the Protectorate were never for a moment in real favour with the nation. The true enthusiasm was reserved for the Restoration. Thus from the reign of Augustus Cæsar to the establishment of the United States, it was democracy which was always, as a rule, on the decline; nor was the decline arrested till the American Federal Government was founded, itself the offspring of the British Constitution. At this moment democracy is receiving the same unqualified eulogy which was once poured on monarchy; and though in its

modern shape it is the product of a whole series of accidents, it is regarded by some as propelled in a continuous progress by an irresistible force."[1]

And now, how far does this "inverted monarchy," as he calls democracy, deserve the reverence paid to it by so many? "The great philosophical writer who had the best opinion of it was Bentham," who claims that it was freer than other governments from "sinister influences" and sectional interests. All people and classes, indeed, follow their own interest, and, whether one or a few or the many rule, they will prefer their own interest. "The remedy is to transfer political power to the entire community"; for they also will follow their interest; but their interest, the good of the greatest number, is the proper end of government.[2]

This reasoning looks irresistible, but Maine thinks that the benefits and the praise claimed for democracy could be claimed on the same ground for monarchy, "particularly in its more absolute forms."

"There is no doubt that the Roman Emperor cared more for the general good of the vast group of societies subject to him than the aristocratic Roman Republics had done. The popularity of the great kings who broke up European feudalism arose from their showing to all their vassals a far more even impartiality than could be obtained from petty feudal rulers; and in our own day, vague and shadowy as are the recommendations of what is called a nationality, a State founded on this principle has generally one real practical advantage through its obliteration of small tyrannies and local oppressions."

Bentham, he says, has been blamed universally for his "low view" of human nature. But, in truth, he took too high a view of its intelligence. The truths he so clearly saw are not visible to the many, but only to the few, "the intellectual aristocracy." History might have shown him the false views of their own interest that a multitude of men may take, but he knew little of history and cared little for its lessons. "Thus his fundamental argument turns against himself." Place power in the people's hand, they will use it, and rightly,

[1] *Popular Government*, pp. 81, 82. [2] *Ibid.* p. 83.

for their own interest, said Bentham. But, argues Maine, "they are too ignorant to be capable of understanding their interest, and this is the chief argument against democracy."

The immunity from sinister influences which Bentham claimed for democracy should, he thinks, have been extended to absolute monarchy. The interest of the monarch is identical with that of the generality (as Hobbes had long before maintained). Bentham probably would have replied that an absolute ruler would favour the military, official, or courtly classes—the classes nearest himself. But the truth is that under the shelter of both "all sorts of selfish interests breed and multiply, speculating on its weaknesses and pretending to be its servants, agents, and delegates." Still he allows, after making all qualification, that democracy has "some portion of the advantages which so masculine a thinker as Bentham claimed for it."

But put the advantages at the highest, democracy or "inverted monarchy" is the most difficult of all kinds of government, and its difficulty lies deep in human nature and the causes which determine human volition. For in spite of such phrases as the Will of the People, the General Will, etc., a very large multitude cannot have a will, cannot, unless on the very simplest and most definite issue, form an act of volition, cannot come to an agreement. The only thing it can do, and must do, is to accept the decision and will of another, and act as if it was its own, whether that of the great party leader, the local party leader, or the counsel of an impersonal newspaper. This, multitudes always tend to do; and even in the case of much smaller numbers, as a jury, the whole would decide as the last eloquent advocate would persuade them, were it not that they are held in check by a clear-sighted, learned, and impartial judge, who brushes away the eloquent irrelevancies of the advocate, and who advises and directs their final judgment.

In fact, it is so difficult for a multitude to come to a decision, a common agreement, and to act as a corporate body, that were it not for certain agencies that have been invented to blind the eyes and to produce the appearance of agreement, democracy, from this inherent difficulty, would be wholly unworkable. "The truth is," says Maine, "that the inherent difficulties of

democratic government are so manifold and enormous, that in large and complex modern societies it could neither last nor work if it were not aided by certain forces which are not exclusively associated with it, but of which it greatly stimulates the energy. Of these forces, the one to which it owes most is unquestionably Party."

There follows an interesting sketch of the party hero, "debarred by his position from the full practice of the great virtues of veracity, justice, and moral intrepidity," who "could seldom tell the full truth, could never be fair to persons other than his followers and associates, could rarely be bold except in the interest of his faction"; and again, a good account of the nature of party: a thing which resembles religion in that men are born into it, or stumble into it, but which is seldom chosen from private judgment or mature deliberation, of whose weak points, as in the case of religion, men will not speak, except to co-religionists; which they will not easily abandon, and to whose assistance, when in serious danger, they return. Party discipline is like military discipline, and party itself he thinks a "survival and a consequence of the primitive combativeness of mankind."[1] It is mitigated war, and its best historical justification is that, instead of frequent civil wars, we have only factions. Like war, it develops the high "but imperfect and one-sided virtues" of self-denial and sacrifice. "But wherever it prevails, a great part of ordinary morality is unquestionably suspended; a number of maxims are received, which are not those of religion or ethics; and men do acts which, except as between enemies, and except as between political opponents, would be very generally classed as either immoralities or sins."[2]

[1] This would seem doubtful considering that there are entire nations, otherwise warlike enough, in which party does not exist, that it is most intense in the most civilised nations, but most of all because in England it had a definite origin and special causes in the reign of Charles I. (see Hallam's *Constitutional History*, chap. ix.). In that reign opposing parties fought it out in the field, and again, later, the Jacobites and Whigs, so that party strife would rather appear a mitigated form not of "primitive combativeness," but of a very recent combative spirit that had slept for a long time before the reign of Charles I.

[2] *Popular Government*, p. 101.

Party in our times acts with great energy, and has a certain effect in bringing multitudes to one mind, and their various wills to one will within each party. Nevertheless, one man's share of political power is so small (out of some seven million voters), that his consequent interest in politics would be slight, in spite of all the efforts of "the caucus, the stump, and the campaign newspaper," were it not stimulated and seconded by a far less respectable force, which, to put it plainly, is no other than Corruption in one or other form; which existed in England up to the French Revolution in the form of the purchase of votes in Parliament, and afterwards in Bentham's time in the shape of vested interests; which exists in France in the shape of thousands of places and offices for partisans, and public works for the rank and file; while in the United States a similar system exists as to offices under the name of the "spoils system," introduced by Andrew Jackson, together with a huge taxation levied through protection, and spent in wholesale bribery.

In England we are now in a peculiar situation with respect to bribery: the making of appointments having been handed over to the Civil Service Commissioners, who select officials by competitive examination, there is only a small space for the "spoils system"; while the Corrupt Practices Act in many directions prevents direct bribery. It remains to be seen "what will come of borrowing the caucus from America, and refusing to soil our fingers with the oil used in its native country to lubricate the wheels." Bribery, however, may be of two kinds—"giving places to expectant partisans paid out of the taxes," or, which is a shorter road, legislating away the property of one class and transferring it to another. The latter is likely to be the corruption of the future.

These two things, party and corruption, greatly aid in the production, not of agreement, but the appearance of agreement, in a multitude. There is a third and very effective agency. This is the manufacture and confident utterance of general propositions on political subjects; a great device, which imposes on imperfectly educated men, who are much taken by it, almost as much as by ornate rhetoric. The party leader has

discovered the secret of the manufacture in abundance and variety, and, indeed, nothing can be simpler. Utter these general propositions, resting on the slenderest, flimsiest, and often irrelevant base of facts, unverified, perhaps unverifiable, in striking language, and crowds of men will assent to them, applaud them, "and thus there is formed a sort of sham and pretence of concurrent opinion." Such loose acquiescence in vague general propositions is a bad mental habit, which has "seriously enfeebled the French intellect. It is most injuriously affecting the mind of England, and it threatens little short of ruin to the awakening intellect of India."

Thus, then, though democracy has some of the advantages which the "thinker of the first order (Bentham) claimed for it," it has the great disadvantage of being the most difficult of governments from its very nature; and the only means of reducing the difficulty, namely, party, corruption, and the manufacture of sham generalities, are influences injurious either to the morality or the intellect of the governing multitude. Far from having an elevating effect, morally, and an educational effect, intellectually, as Mill argued, a participation in politics will have the exactly opposite effect in the opinion of Maine. And this likely result was also apparent to the intuitive glance of Carlyle, who, as usual, does not reason it out, but briefly and contemptuously describes the effects of universal suffrage as "infinite amenability to beer and balderdash," which may be taken roughly to correspond to Maine's corruption and spurious generalisations.

As to remedies, now that democracy is so close, few or none have been suggested in England. He evidently rates as lightly the remedies of Mill (his representation of minorities and plural voting), as he differs from him as to the excellence of popular government. Still, democracy may be made safe and tolerable, by "wise constitutional provisions carefully thought out beforehand; the example of America proves it to be possible"; but it also shows that it is unsafe to leave open a doubt on any single topic of consequence, a mistake which was made, as to State rights, which led to the terrible civil war.

The remedy for us is to borrow a few of the American securities against surprise or haste in constitutional legislation. To put our constitution into writing is not enough. Much is already in writing. What is necessary is to make a distinction between ordinary legislation and constitutional legislation, and to require for the last a special legislative procedure intended to secure caution and deliberation, and as near an approach to impartiality as a system of party government will admit of.

Otherwise we are drifting to "a type of government associated with terrible events,—a Single Assembly, armed with full powers over the constitution, which it may exercise at pleasure. It will be a theoretically all-powerful Convention, governed by a practically all-powerful secret Committee of Public Safety, but kept from complete submission to its authority by obstruction, for which its rulers are always seeking to find a remedy in some kind of moral guillotine."[1]

§ 3

In his Essay on the "Age of Progress," we have a large subject unsatisfactorily treated, and not altogether in accordance with his former views.

He first notes that a passion for political change, for the transformation of laws and institutions in a democratic direction, manifests itself in all the more civilised communities; a passion resembling the enthusiasm for religious reform of the sixteenth century, but much less intelligible. He raises the question whether this passion is confined to the region of politics, whether it is due to "exceptional causes affecting the sphere of politics, or whether it is a universal and permanent phenomena," that is, whether it is a desire for change in all other directions—in usages, manners, fashions, religion, morality, etc., and that continually.

His conclusion is, that the passion is due to exceptional causes applicable to politics alone, and that it is not likely to be permanent even when so restricted. Let us see his reasons. In the first place, he argues—and it is an old idea of his—that

[1] *Popular Government*, p. 126.

few communities will so much as tolerate the idea of a change in their usages, laws, and institutions. The great mass of mankind, the entire Mohammedan world, the coloured races of Africa, the countless myriads of Chinese, the vast majority of the millions of Hindoos, all detest what we call reform; only the "undoubtedly feebler Japanese"[1] can tolerate it.

Thus, then, the enthusiasm for change is rare; not only so, where it does exist, it is quite modern. It took its rise in France in the middle of the last century, a time when there was no legislation in England and no desire for it. It was due to Rousseau's speculations and ideas; it was largely the cause of the French Revolution, after which the ideas came to England, and there united with a peculiarly English stream of opinions of the same general tendency due to Bentham.

But the love of change thus generated is, he thinks, limited to politics, perhaps only to a part of politics. For man in general, in the larger part of his nature, is a conservative animal that lives by use and wont—a creature of habits, as the proverb says, and much change is distasteful to him.

Burke's "sullen aversion to innovations" is not confined to Englishmen; it is characteristic of the species, and extends to nearly everything. Man does not change his habits, his code of manners, his customary behaviour. Look again at fashion, supposed to be so changeable, yet the changes are so limited that it is ever returning on its former self, ever reproducing its own past state. The changes are confined within the narrowest limits, and much that appears new is really old. And the world of fiction in literature, now largely written by women, proves that half the human species have no sympathy with change, are not votaries of progress, since it is in past types of life and ways of life that they find their ideals.

Moreover, the study of savage races, supposing them to resemble our own remote ancestors, shows that after all our boasted civilisation we have departed less from the primeval man or the savage than is commonly supposed. The veneer of

[1] But, strange to say, "these undoubtedly feebler Japanese" have since shown they are not feebler, and mainly because they have shown a remarkable capacity for taking up progressive ideas in all directions.

civilisation is thin, underneath it is the savage, which, like his brother savage, makes war, dances, is fond of hunting, values rhetoric at a high price, has his "totem" in the shape of his party newspaper, and, "like the savage, is apt to make of his totem his God."

If, now, the nature of man in general is so immobile, whence the passion for political change? It is not due, as some suppose, to progress in scientific invention and discovery, there being little or no connection between progress in this direction, the production of new ideas, and innovating legislation. It is otherwise in the East, he allows, but not in the West, in which it has rather been half or quasi-sciences, like Bentham's *Law Reform*, or Ricardo's *Political Economy*, that have extensively affected legislation for a time, but which "have now fallen almost entirely out of fashion."

The reasons he assigns are: first and chiefly, that legislation is one of the chief activities of government, all of which are viewed with great interest by the public, for he allows that popular government is the most "interesting" of all governments. Legislation, and the discussion that accompanies it, is so interesting that life with us would be somewhat flat without it; as witness the Russian despotic government, where the mere monotony of the general life has, it is thought, sometimes induced Czars to make war as a relief from it. It is interesting not merely to legislators who introduce Bills and watch their progress, but to the most skilful politicians. The game of party politics is interesting to the public just as a cricket match is, and the match goes on for half the year in Parliament, and again during the recess on the platform. Secondly, the opposite parties are stimulated to compete with each other in the production of innovating legislative programmes.

But to regard party politics as a highly interesting game is a somewhat dangerous frame of mind; still more when the stakes are legislative measures on which the whole future of the country may depend; but most of all when the legislation affects the constitution, which may at present be altered with as much ease and in the same manner as a new law may be passed. He concludes that "it is not possible to have an

infinity of legislation at once safe and beneficent," and adds that the probabilities are that "the possibilities of reform are strictly limited."[1]

We are apt to be too confident, because we have been so fortunate in the past, because we have been uniformly victorious and prosperous. "We have never lost a battle in Europe, or a square mile of territory; we have never taken a ruinous step in foreign politics; we have never made an irreparable mistake in legislation. Not so with other nations like France." But if our competing politicians multiply occasions for calamities, as their game prompts them to do, "it is possible and even probable that they will occur."

§ 4

Thus, then, the causes of the belief that ours is an age of progress, and that we are to have endless legislation, are the increasing tendency of governmental activity towards legislation, the competition of parties which stimulates their ingenuity in the production of new legislative programmes, finally the interest of the public in the game and the applauses of the gallery.

There are, however, other and deeper causes, especially two formerly famous theories, which, though now nearly dead and half-forgotten, are yet still efficacious. Through words and associated phrases which they have left behind them, the theories have taken up a new life, and, like the wounded hero in the Border ballad, "When their legs are smitten off, they fight upon their stumps." One of these theories is that of Rousseau, founded on the natural rights of man; the other, the theory of Bentham, based on the greatest happiness principle. They have had great influence in politics and, even outside the domain of politics, in literature. Thus Dickens, who is always

[1] Compare the *Early History of Institutions*, in which he thinks that the increasing energy of Legislatures is a characteristic of modern States, and of our century in particular (p. 398); also where he praises Napoleon for the highly beneficial legislation of the Code, which has been largely adopted by other countries.

attacking abuses, legal or social, was influenced by Bentham; while Thackeray in his contempt for the artificialities of civilisation was, he thinks, under the influence of Rousseau.

"The influence which the political theory originating in France and the political theory originating in England still exercises over politics seems to me as certain as anything in the history of thought can be." It is therefore necessary to examine these theories. And this he proceeds to do.

Happily, it is not necessary to follow his exposition: the theories having been already given to the reader, a few words with reference to his criticism may suffice. The theory of Rousseau is partly due to Hobbes, he remarks; and this is partly true. If the sovereignty belongs to the people, all Hobbes' attributes go with it. This is Hobbes; but that the people are the true source of sovereign authority, and may sometimes resume their original power, is to be found in Locke, and Rousseau merely pushes the doctrine to its extreme limit by declaring that their sovereignty is inalienable.

This theory, he tells us, is the parent of a host of phrases, "the people," the "sovereign people," sole source of all legitimate power, etc. It is also the source of the vastly more formidable conception of the "omnipotent democratic State rooted in natural right: the State, which has at its absolute disposal everything which individual men value, their property, their persons, and their independence; the State, which is bound to respect neither precedent nor prescription; the State, which may make laws for its subjects, what they shall eat or drink, and in what way they shall spend their earnings; the State, which can confiscate all the land of the community, and which, if the effect on human motives is what it may be expected to be, may force us to labour on it when the older incentives to toil have disappeared."

Nevertheless "this political speculation, of which the remote and indirect consequences press us on all sides, is of all speculations the most baseless." This is true in one sense. The supposed compact is not a historical fact, as before said, and, so far as history teaches, political societies did not originate in this way. But it is not enough to disprove the historical

basis. He should prove that men have no natural rights either political or civil; and this is not so easy to do for anyone who believes in natural law in any sense, and even believes it has been of great service to men, as Maine does, though he dislikes the modern applications of it.

"Some particles of Rousseau's thought may be discovered in the mental atmosphere of the time," he tells us. "Natural law" and "natural rights" had a great attraction for the lawyers of France. This is true and very significant; it is indeed one reason why the theory conquered in France for a time, and in the end. Lawyers, the judges, jurists, all believed in natural law as part of the civil law, as partly the source of legal rights; but have men in civilised States no natural rights, political as well as civil? are there not certain rights no government should infringe, as rights to civil and religious liberty? Men have such natural rights, and it is from their existence alone that we can defend ourselves from Rousseau's omnipotent democratic State. Rousseau is the best answerer of Rousseau, for the doctrine of natural rights alone can defend us from the arbitrary despotism whether of one or many.

He rightly points out Rousseau's grand error; he was averse to representation; he was thinking only of a small community like a Swiss canton, where the sovereign people could meet and directly legislate.[1]

The other theory to which Maine refers was Bentham's, which he thinks bears a considerable resemblance to Rousseau's, since in effect it makes the people sovereign; the difference lies in its different philosophic basis. Bentham rests his theory on the greatest happiness of the greatest number as the proper standard of legislation. Laws should aim at this, not at realising and legalising natural right. Maine objects truly that when the multitude is made sovereign it suffers from two difficulties. It cannot easily come to a decision or agreement at all; and, secondly, it does not know wherein its happiness consists or how it can be best promoted. Rousseau was wiser here. He knew that the omnipotent sovereign people was not all-wise.

[1] Sieyes, the great constitution builder, corrected Rousseau's error in this respect.

Hence the vast importance of wise legislators, especially at the first founding of States, to which, as we have seen, Mill also agrees.

Both the theories were originally theories of law reform. Bentham was not a constitutional reformer till after Waterloo, when he was past sixty years of age. Now, law reform is a less serious matter than constitutional reform. In the former a mistake may be corrected. Not so in the latter; there is no retracing steps, and a mistake made may be the beginning of the ruin of a great nation.

His conclusion is that the ideas current as to the age of progress in which we are supposed to live require revision and modification. Progress, he repeats, is not the natural condition of man. This love of change is confined to a few, and with them it is extremely modern, not much more than a hundred years old in France, or fifty years old in Great Britain. Moreover, it is confined to political change. We are familiar with the way in which the innovating theory has worked. A small minority get the ear of important governing persons and try to persuade them to adopt their ideas. So it was in France; so it was in England before the Reform Bill, when Bentham and the philosophical Radicals got their ideas taken up. People submit to the process, for the most part, owing to the "remote effect of words and notions derived from broken-down political theories." It follows if society is not normally changeable, the attempt to conduct it safely through the unusual and exceptional process of change is not easy but extremely difficult. "A sudden and sweeping political reform constantly places the community in the position of an individual who should mount a horse solely on the strength of his studies in a work on horsemanship."

§ 5

He raises the question why historical constitutions (like ours), the product of experience, have so great an advantage over *à priori* constitutions founded on speculative assumptions (such as the various constitutions in France from 1791 onwards). His reason is that "human nature has always a limited

capacity, as in general it has very slight taste, for adjusting itself to new conditions. The utmost it can do is to select parts of its experience and apply them tentatively to these conditions; and this process is always awkward and often dangerous. A community with a new *à priori* political constitution is at best in the disagreeable disposition of a British traveller whom a hospitable Chinese entertainer has constrained to eat a dinner with chopsticks. Let the new institutions be extraordinarily wide of experience, and inconvenience becomes imminent peril. The body-politic is in that case like the body-natural, transported to a new climate, unaccustomed food and strange surroundings. Sometimes it perishes altogether. Sometimes the most unexpected parts of its organisation develop themselves at the expense of others; and when the ingenious legislator had counted on producing a nation of self-denying and somewhat sentimental patriots, he finds that he has created a people of Jacobins or a people of slaves."[1]

The question is pertinent, because the question of the reform of the House of Lords will be before the public again, and the question whether we are to go on assumption or experience will again arise. It is the one institution least changed from its original form.

What is wanted from a Second Chamber is the security afforded by its concurrence with the First Chamber after full examination of the measures concurred in. To improve the House of Lords is not, as many think, a desperate undertaking. Its members are great landowners, true; and for the moment landed property is threatened. But most of the objections to it lie against all private property, and there may again be a time when it is recognised that the possession of a great estate, as is natural in a form of ownership probably descended from a form of sovereignty, implies more administrative power and kindlier relations with other classes having subordinate interests than almost any other kind of superiority founded on wealth. But a hereditary Legislature is absurd, an objector urges. Not so, says Maine; it accords with scientific theory.

[1] Pp. 175, 176.

As to individuals it is a mere chance under any form of government whether they will be qualified. But if the qualities necessary can be attained in a class it is likely they will be transmitted (on Darwinian principles) to their children as a *class*. Finally, it is said the age of aristocracies is over. As to this he is not certain, but he thinks it one of the chief drawbacks of democracies, that though they easily produce despotism, they do not seem capable of producing aristocracy, though from that form all improvement has hitherto sprung.

Now, this question would seem to depend on the meaning of the word "aristocracy," whether of birth or wealth or ability. Certainly, both of the latter have been produced in France and America, while if we are to reckon England as a democracy still more examples of natural aristocracies might be cited. Maine himself allows that wealth was in ancient times one of the roads to nobility, and it is so still with us. The nation generally, but chiefly the great middle class, has produced statesmen, generals, Indian administrators and governors, judges, chief justices, bishops, archbishops, not to speak of great men of letters, science, invention, and art. In this sense under our popular government we have produced an aristocracy (some of whom have been admitted into the Upper Chamber); but if England is not allowed to count as a democracy, France and America have produced the like class, the born aristocrat and leaders of men. But on this question and the question of heredity, perhaps, on the whole, the words of Professor Sidgwick, the result of a careful weighing of opposite considerations, come nearest the truth:—"The chance of obtaining superior intellectual qualifications through physical inheritance in the sons of statesmen, though it must be allowed to be worth something, is too indefinite and uncertain to be worth much. Again, a hereditary legislator has no doubt special opportunities of obtaining the best educational preparation for a statesman's career, and of imbibing the results of political experience in the intimacy of domestic and social intercourse; but these advantages would seem to be, on the average, at least balanced by the temptations incident to rank and wealth, and the absence of the spur to sustained intellectual

effort which economic necessities or social ambitions supply to youths of humbler origin."[1]

§ 6

It is curious how different the views of philosophers may be on this subject of progress. Thus we have seen Mill's visionary hopes of boundless progress of all kinds; we were yet mere children, compared with the grown men to come; much and early and long-continued progress in all directions was to be expected, in particular social and political and moral progress, largely by the reform of bad laws and institutions, especially after we have obtained a true science of society, but which he confesses had not appeared up to 1864. On the contrary, in the case of Maine we see how narrow a man can be, how he can misread the last three hundred years of progressive history, when treating of the same subject of progress, and what fears and alarms he associates with this same process of improvement in laws and institutions which in his earliest work was the theme of all his praises.

I have first to note that he shows a confused and vacillating conception of progress, and that even his final definition in the present book is a narrow one. He began by identifying progress with improvement in laws and customs (*Ancient Law*, p. 22), which is a very narrow view of it, though he was in sympathy with that narrow view, since he praises the Romans for the improvements they effected in their laws by following the model of natural law, while he deplores the condition of the Hindoos condemned to remain stationary through their law, being stereotyped in the Code of Manu. The Romans were progressive, and that was well; the Hindoos and Chinese were not, and he tries to explain the fact. But when he wrote the *History of Institutions*, fifteen years later, he has so far advanced as to discern that progress is a wider thing than the improvement of law. "Progress is in fact the same thing as the continued production of new ideas,"[2] whether in law, litera-

[1] *Elements of Politics*, p. 476.
[2] *History of Institutions*, p. 226.

ture, religion, or art, in which sense he affirmed that both India and China had considerably progressed in the past. In this sense there is progress in the modern Western world, unknown to the ancient world, scientific discoveries and inventions, "changing the material conditions of life, and new rules of social conduct; the chief of this last class, and certainly the most powerful in the domain of law proper, being the famous maxim that all institutions should be adapted to produce the greatest happiness of the greatest number."

We have here a wider and a truer view of progress, but yet not wide enough, since it makes no reference to science or invention to which the new science leads, nor yet to philosophy.

But in his *Popular Government*, while adhering to his definition of progress as the "production of new ideas," he for the first time refers to the new science and invention as part of progress, and even as the chief cause of the remainder of progress or the production of new ideas. Thus he says, "If progress be understood, with its only intelligible meaning, that is, as the production of new ideas, scientific inventions and scientific discovery are the great perennial sources of these ideas. Every fresh conquest of Nature by man, giving him the command of her forces, and every new and successful interpretation of her secrets, generate a number of new ideas, which finally displace the old ones and occupy their room."[1] This is largely true. It is for Maine a wholly new theory, or rather, for the first time we have a theory, a cause assigned for the fact of progress. But it is not his own theory. It is to be found in Mill, who obtained it from Comte. It is largely but not altogether true. The progress of positive science has during the past three hundred years affected religion, philosophy, invention, even literature. But it has only been as moral, political, and economical science that it has affected government and legislation. But these he thinks are not properly sciences. True science, which is really connected with progress or the production of new ideas as its cause, has no tendency to introduce innovating legislation. But he has already laid down in his *Early History of Institutions* as a

[1] *Popular Government*, p. 145.

part of progress, "new rules of social conduct," and in the domain of law proper Bentham's "famous maxim that all institutions should be adapted to produce the greatest happiness of the greatest number," and if so, those people whom he blames for thinking changes in the law to be part of progress are not so far wrong. It was, in fact, the whole of progress, according to his own earliest definition of it.[1] Thus, he says, in *progressive* societies "social necessities and social opinion are always more or less in advance of law. We may come indefinitely near to the closing of the gap between them, but it has a perpetual tendency to reopen. Law is stable. The societies we are speaking of are progressive. The greater or less happiness of a people depends in the degree of promptitude with which the gulf is narrowed." Hence one would think a need of perpetual new legislation.

And in fact, so long as Maine holds equally with Bentham, as he does, that that is the true aim of legislation,[2] ameliorative, progressive legislation must go on, laws must be added to, amended, repealed, until the aim is reached, so far as possible. Equally with Bentham he is committed to innovating legislation, unless indeed he is prepared to maintain that our laws and institutions do already conform to Bentham's standard, that the goal of perfect law which assures the greatest happiness of the greatest number has been reached. In fact, he repeatedly praises Bentham as a law reformer, but he appears to think that the work of law reform as conceived by Bentham is finished. But law reform, the mere removing of illogicalities, contradictions, etc., mere formal improvements, was not the whole reform that was in Bentham's mind. He also contemplated improvement in the matter of law, remedial, ameliorative legislation—legislation in the interest of the greatest number wherever it has been overridden and set aside by the "sinister interest" of the old governing classes. This kind of legislation has been going on, and numerous laws for the benefit of the working classes, for the removal of just grievances, have been passed. And this kind of legislation will go on till all just claims are satisfied—till the claims of

[1] *Ancient Law*, p. 24. [2] *Early History of Institutions*, p. 400.

justice and the general happiness are all satisfied and harmonised. It will not indeed be an endless process. Much has been done in the past sixty years, and at an increasing rate in the past twenty years. There still remains something to be done, but it cannot now be great in proportion, though it may still be important. The argument against democracy that it cannot know its own interest, or how to promote it, does not seem to me to be of much weight. For the people can obtain representatives, the ablest in the kingdom, to serve them, who can find out their true interest for them, and, so far as it can be furthered by legislation, effect such legislation.

As to his general view of progress, it is confused and inconsistent, while his theory in his last book, so far as true, is anticipated by Comte. In Maine's view, as in that of Burke, there would be little room for originality or progress in the moral and political and economical sciences, hardly even in jurisprudence, which he set out in his *Ancient Law*, to reconstruct on a firmer basis. The new theories, in morals, politics, economics, of the eighteenth century were imperfect, no doubt, but they contained new ideas. They were even progress, according to his definition of it, and they were improved upon, that is, there was further progress in the construction of these imperfect sciences, which are not yet completed.

The fact is, for more than three hundred years there has been a long progress in the true sense, a change for the better generally; the introduction of new things as well as the "production of new ideas"; not merely the creation of new sciences and new inventions, but progress in the discovery of truth in all directions—in religion, philosophy, law, and government; a prodigious outburst of new ideas in poetry, both in the sixteenth and nineteenth centuries; an evolution of new emotions in fine art and music in the seventeenth and eighteenth centuries. There has been ever more and more progress during the past century and a half, especially in science and invention, —progress unparalleled in the history of the world,—so that rightly we may say, in spite of Maine, that we do live in the Age of Progress. And the progress has been grand, on the whole, in spite of some loss and drawbacks.

There are, indeed, as I have already stated, signs that we are nearing the term of this long progress of more than three centuries. When our theology has been revised under the light of philosophy and criticism, and philosophy revised under scientific conceptions and the widest scientific conclusions,—and all this is being done, largely has been done, and soon will be substantially finished,—progress in this direction will then also be finished, and it may be long before any further change be possible or desirable. When this stage has been reached, further changes in philosophy or religion will be slight. Men will want them for use, instead of prolonged discussion. As for art and literature, they will continue to be produced; they merely change with the spirit of the age, and with the social and spiritual environment; but it is not in their nature to progress much. Maine rightly holds that scientific inventions and practical discoveries will continue to be made indefinitely, which may bring with them certain political and social changes, the nature of which it is impossible to foresee, but only thus far that they will not substantially affect, though they may modify, the main conclusions of political philosophy or the fundamental institutions of society and law, to which they chiefly relate. For nothing can substantially and permanently change these except a general change in the nature of the human units, of which institutions and laws are merely the outward expression; and such a change is not merely, as Maine holds, extremely rare, but also where it does take place is extremely slow.

THE END

PRINTED BY MORRISON AND GIBB LIMITED, EDINBURGH

Date Due

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MAR 24 1959
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JUN 3 1959
MAR 16 '60
MAR 30 '60
AP 8 '64
MY 20 '64
JA 25 '65
AP 14 '65
APR
APR 13
MAY 25
APR 5 1967
JE 1 '73

PRINTED IN U. S. A.

JA84
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138466

AUTHOR Graham, W.

TITLE English political philosophy from Hobbes to Maine

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